South Gippsland Shire Council

Planning Panel Victoria's Recommendations and Council's Proposed Response to Planning Scheme Amendment C90

For Adoption at Ordinary Council Meeting 28 August 2019

What is this document?

On the 1 July 2019, Planning Panels Victoria released the Panel report for the South Gippsland Planning Scheme Amendment C90 Housing and Settlement Strategy with 34 recommendations. The recommendations are set out in the following table with Council's proposed responses.

The next step for Amendment C90 is for Council at its 28 August 2019 Ordinary Meeting to consider adoption of:

1. The following proposed responses to Panel's recommendations; and
2. The final suite of amendment documents to be submitted to the Minister for Planning.

Panel's Recommendations	Council's Proposed Response
1. Adopt Amendment C90 to the South Gippsland Planning Scheme as exhibited subject to the recommendations outlined in this Report.	It is Council's intention to submit Amendment C90 to the Minister for Planning following an Ordinary Council Meeting on 28 August 2019 which will consider the recommendations of the Panel Report.
2. At Clause 21.17-9 under the heading 'Landscape and Built Form' amend the first bullet point in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response.*	Agreed. As per page 84 of Attachment 2.1.3 Submissions – Recommendations and Details, the changes will be evident in the final suite of documents submitted to the Minister for Planning.
3. At Clause 21.09-1 under the heading 'Transport' amend local planning policies pertaining to 'flexible transport options' in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.	Agreed. As per page 3 of Attachment 2.1.3 Submissions – Recommendations and Details, the changes will be evident in the final suite of documents submitted to the Minister for Planning.

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4. At Clause 21.08-11 and 21.08-12 amend local planning policies pertaining to the Great Southern Rail Trail and Grand Ridge Rail Trail in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.	Agreed. As per page 2 of Attachment 2.1.3 Submissions – Recommendations and Details, the changes will be evident in the final suite of documents submitted to the Minister for Planning.
5. At Clause 21.17-3 under the heading 'Yanakie' amend local planning policies to reference 'small scale' tourist development in place of 'self-contained' tourist development in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.	Agreed. As per page 87 of Attachment 2.1.3 Submissions – Recommendations and Details, the changes will be evident in the final suite of documents submitted to the Minister for Planning.
6. Update all exhibited Amendment documentation to comply with the Ministerial Guideline on the Form and Content of Planning Schemes.	Agreed. The changes will be made as per the Ministerial Direction on the Form and Content of Planning Schemes and will be evident in the final suite of documents submitted to the Minister for Planning.
7. Update the exhibited policy and format and detail of all relevant mapping within the Amendment (including Framework and Restructure Plans) to improve accuracy relative to the cadastre base and clarity in a way that is policy neutral, subject to the further recommendations in this Report about policy and mapping changes.	Agreed. The updated maps prepared for further notice improved accuracy and clarity. These documents can be found under the Further Notice Documents heading the C90 website. A final review of these documents will be made to ensure that the mapping is clear and policy neutral before being submitted to the Minister for Planning.
8. Consider whether further public notification and an opportunity for further public participation is required before the Amendment is progressed as a result of updates to the Amendment documentation.	Council will not be considering further public notification as no changes to the final suite of documents are proposed that require this.
9. Remove reference to policy documents and guidelines that have not been the subject of public exhibition or are no longer current.	Agreed. Council will remove the reference to South Gippsland's Siting and Design Guidelines at Clause 21.07-3 and Liveable Housing Design Guidelines (2012) at Clause 21.21 as recommended on page 33 of the

	Panel Report. These changes will be evident in the final suite of documents submitted to the Minister for Planning.
10. At exhibited Clause 22.05, delete the heading "*Development of lots in Old and Inappropriate Subdivisions*" and its associated policies.	Agreed. Council will delete the heading "*Development of lots in Old and Inappropriate Subdivisions*" and its associated policies at Clause 22.05 as recommended on page 35 and 36 of the Panel Report. These changes will be evident in the final suite of documents submitted to the Minister for Planning.
11. At exhibited Clause 22.05, under the heading "*Application requirements*", delete the last paragraph which requires applications for a dwelling where the Restructure Overlay applies to meet the application requirements of the Incorporated Document.	Agreed. Council will delete the last paragraph under the heading "*Application Requirements*" at Clause 22.05 as recommended on page 36 of the Panel Report. These changes will be evident in the final suite of documents submitted to the Minister for Planning.
12. Replace the use of the words "*Old and Inappropriate Subdivisions*" at exhibited Clauses 22.05, 22.06 and 22.07 with the words "*land within the Restructure Overlay*" as appropriate.	Agreed. Council will replace the words "*Old and Inappropriate Subdivisions*" at exhibited Clauses 22.05, 22.06 and 22.07 with the words "*land within the Restructure Overlay*" as recommended on page 36 of the Panel Report. These changes will be evident in the final suite of documents submitted to the Minister for Planning.
13. Council consider undertaking a fulsome review of Clauses 22.05 and 22.06 of the South Gippsland Planning Scheme pertaining to Rural dwellings and Rural subdivision to ensure their consistency with the Planning Policy Framework and established principles (including Planning Practice Notes) relating to the form and scope of a local planning policy.	Agreed. This recommendation falls outside of the scope of this Amendment. Council notes the recommendation at page 38 of the Panel Report and will review the clauses as part of Council's future strategic planning work.

14. Extend the Fish Creek settlement boundary to include the land at 2 Sheedy Road, Fish Creek, as shown on the amended Framework Plan (Document 18A).	Agreed. This change was made in the latest version of documents prepared as part of further notice. Please refer to Clause 21.15.
15. Extend the Town Centre designation on the Fish Creek Framework Plan to include the land at 2-37 Falls Road, Fish Creek, as shown on the amended Framework Plan (Document 18A).	Agreed. This change was made in the latest version of documents prepared as part of further notice. Please refer to Clause 21.15.
16. Amend the Strzelecki Framework Plan to show the northern settlement boundary as shown on the amended Framework Plan (Document 18A) and identify the existing church and to show the church located at the eastern edge of the settlement.	Agreed. This change was made in the latest version of documents prepared as part of further notice. Please refer to Clause 21.19.
17. Amend the Framework Plans for Bena, Kardella and Ruby in accordance with the updated Framework Plans (Document 18A).	Agreed. This change was made in the latest version of documents prepared as part of further notice. Please refer to Clause 21.18 and 21.19.
18. Amend the Framework Plan for Buffalo in accordance with the updated Framework Plan (Document 18A), provided the further bushfire assessment to be undertaken for Restructure Lot 1 demonstrates it is possible to site a dwelling on the Lot.	Partially agreed. The change to the Framework Plan was made in the latest version of documents prepared as part of further notice. Please refer to Clause 21.18. Council considers that further bushfire assessment is not appropriate to be dealt with as part of this amendment as bushfire assessment will be undertaken at the permit stage.
19. Amend the Leongatha Framework Plan to exclude land at 170 Simons Lane from the settlement boundary in accordance with the amended Framework Plan (Document 18A).	Agreed. This change was made in the latest version of documents prepared as part of further notice. Please refer to Clause 21.12.

20. Amend the Venus Bay Estate 1 Framework Plan in accordance with the updated Framework Plan (Document 18A), subject to the change being consistent with Amendment C109.	Agreed. This change was made in the latest version of documents prepared as part of further notice. Please refer to Clause 21.17.
21. Council confirm whether all current landowners affected by the Restructure Overlay received targeted notification in 2019 and consider whether further notification processes are required before progressing the Amendment such as notice directed by the Minister for Planning.	Due to a mapping anomaly, six landowners across Venus Bay, Jumbunna and Darlimurla were not notified as part of the targeted notification. There were no changes to the dwelling entitlement for these lots. Council can confirm all other current landowners affected by the Restructure Overlay were sent targeted notification letters. In Council's opinion, no further notification is required.
22. Update the exhibited version of *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire, August 2017* as follows before incorporating it in the South Gippsland Planning Scheme as an Incorporated Document: a) Clarify the ongoing operation of the requirements of relevant overlay controls and the underlying zone to obtain a planning permit for the construction of a building or carrying out of works, even after the consolidation of land in accordance with the Restructure Overlay. b) Ensure that existing uses referred to in Clause 63 of the South Gippsland Planning Scheme are preserved by the Incorporated Document. c) Update the list of exemptions for structures (buildings) as proposed in version 3 and confirm that works may be carried out without prior lot consolidation. d) Consider whether the provisions of the Restructure Overlay provide sufficient flexibility in respect of roadways adjacent to Restructure Lots, or whether the model proposed in version 2 should be progressed to the extent required.	Agreed. The incorporated document will be updated in response to Panel's recommendations as follows: a. Additional words included to clarify this. b. Additional words included to ensure this is the case. c. Additional words included to clarify this. d. Roadways wording reconsidered. e. Wording revised to incorporate the terminology "generally in accordance with". f. Application requirements reinstated.

e) Provide a degree of flexibility to modify the layout of Restructure Lots generally as proposed in version 2 by adopting the terminology “generally in accordance with”. f) Reinstate previous application requirements from version 2 as relevant to require a response to the objectives of the Incorporated Document and the purposes and decision guidelines of the Restructure Overlay.	
23. For Figure 17, Darlimurla, delete exhibited Restructure Lot 5 and renumber exhibited Restructure Lot 6 as Restructure Lot 5 and realign its south west boundary to match the title boundary as shown in the amended Incorporated Document (Document 18B).	Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document.
24. For Figure 14, Hedley - Salmon Road, exclude the land in Restructure Lot 1 from the Restructure Overlay if it is consolidated before Amendment C90 is approved. Alternatively, if the consolidation does not occur before Amendment C90 is approved, include Figure 14 as shown on the amended Restructure Plan (Document 18B).	Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document.
25. For Figure 4, Jeetho – Wettenhalls Road, amend the boundaries of Restructure Lots 1 and 2 generally in accordance with the amended Restructure Plan (Document 18B).	Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document.
26. For Figure 7, Jumbunna, exclude land comprising Restructure Lots 21 and 22 from the Restructure Overlay (part 76 Rees Road, Jumbunna) as shown on the amended Incorporated Document (Document 18B).	Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document.
27. For Figure 9, Meeniyan West, delete proposed Restructure Lot 2 from the Restructure Overlay (39 McIlwaine Street, Meeniyan	Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document.

West) as shown on the amended Incorporated Document (Document 18B).	
28. For exhibited Figure 5, Outtrim: a) Realign the boundary of Restructure Lot 8 to reflect the ownership of existing structures if settlement of the property is completed before the Amendment is approved. b) Replace the Special Restructure Area with Restructure Lots 22 and 23 and an extended Lot 16, as shown on Figure 5 of the amended Incorporated Document (Document 18B). c) Amend Restructure Lot 9 to remove the road reserve described as R-1 on LP3952.	a. Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document. b. Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document. c. Agreed. Council will remove the road reserve in Restructure Lot 9 as recommended on page 112 and 113 of the Panel Report. These changes will be evident in the final suite of documents submitted to the Minister for Planning.
29. For the exhibited Incorporated Document, Outtrim: a) Include a requirement for access to be provided from Restructure Lot 17 to Lot 1 on Title Plan 164640, as addressed in the amended Incorporated Document (Document 18B). b) Include a requirement for further strategic work to be undertaken in relation to Lomagnos Road, as addressed in relation to Restructure Lot 21 of the amended Incorporated Document (Document 18B).	a. Agreed. As part of the further notice documents, Council has updated the associated Restructure Plan table in version 3 of the Incorporated Document. b. Agreed. As part of the further notice documents, Council has updated the Restructure Plan table in version 3 of the Incorporated Document.
30. For Figure 19, Port Welshpool: a) Amend Restructure Lot 7 of the Incorporated Document to remove the property fronting Adams Road (115 Adams Road) and include the rear (eastern) property currently forming part of Restructure Lot 7, as well as the	a. Agreed. Council will remove 115 Adams Road from the Restructure Overlay and apply the Restructure Overlay to the land at 300 Telegraph Road as recommended on page 124 of the Panel Report. These changes will be evident in the final suite of documents submitted to the Minister for Planning.

property at 300 Telegraph Road in Restructure Lot 7. A vinculum notation should be considered. b) Amend Restructure Lot 9 to delete a road reserve, as shown on the revised Incorporated Document (Document 18B).	b. Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document.
31. For Figure 15, Toora: a) Exclude the land within Restructure Lot 7 from the Toora Coastal Restructure Plan and Overlay (21 Acklands Road, Toora) as shown on the amended Incorporated Document which was the subject of targeted notification in 2019. b) Remove six sections of road reserves to the coast from various Restructure Lots, as shown on the amended Incorporated Document (Document 18B).	a. Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document. b. Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document.
32. For Figure 16, Buffalo, amend the Restructure Plan in accordance with the updated Incorporated Document (Document 18B), subject to further assessment confirming that new residential development can meet the relevant requirements of the South Gippsland Planning Scheme in relation to bushfire risk and management.	Partially agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document. Council considers that further bushfire assessment is not appropriate to be dealt with as part of this amendment as bushfire assessment will be undertaken at the permit stage.
33. For Figure 20, Jacks Road-Stony Creek, amend the status of Restructure Lot 1 to be identified as a 'no dwelling development lot', as shown on the revised Incorporated Document (Document 18B).	Agreed. As part of the further notice documents, Council has updated the relevant map in version 3 of the Incorporated Document.
34. For Figure 6 Korumburra-Bena Road-Whitelaw, amend the mapping and accompanying table to clearly show the road reserves that form part of Restructure Lot 1.	Agreed. Council will clearly identify the road reserves as recommended on page 141 of the Panel Report. These changes will be evident in the final suite of documents submitted to the Minister for Planning.

Planning and Environment Act 1987

Panel Report

South Gippsland Planning Scheme Amendment C90
Housing and Settlement Strategy

1 July 2019

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

South Gippsland Planning Scheme Amendment C90

Housing and Settlement Strategy

1 July 2019

Dalia Cook, Chair

Debra Butcher, Member

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List of abbreviations and glossary

Amendment	Amendment C90 to the South Gippsland Planning Scheme
CFA	Country Fire Authority
CMA	West Gippsland Catchment Management Authority
DELWP	Department of Environment, Land, Water and Planning
Incorporated Document	*Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire, August 2017*
MSS	Municipal Strategic Statement
planning scheme	South Gippsland Planning Scheme
PPF	Planning Policy Framework
RLU Strategy	*South Gippsland Rural Land Use Strategy 2011*
Strategy	*South Gippsland Housing and Settlement Strategy, September 2013*
VPP	Victoria Planning Provisions

Overview

Amendment summary	
The Amendment	South Gippsland Planning Scheme Amendment C90
Common name	Housing and Settlement Strategy
Brief description	The Amendment proposes to implement key recommendations of the *South Gippsland Housing and Settlement Strategy, September 2013*, by introducing changes to the Municipal Strategic Statement and local planning policies. It would also involve confined rezoning or changes to the application of overlay controls. The Amendment proposes to apply the Restructure Overlay to specific land and to make other consequential changes.
Subject land	The Amendment applies to land in nominated settlements in the South Gippsland Shire. It particularly affects land in subdivisions characterised by South Gippsland Shire Council as 'old and inappropriate'.
The Proponent and Planning Authority	South Gippsland Shire Council
Authorisation	31 October 2016 with re-authorisation 13 October 2017 (to include additional settlements in the proposed Restructure Overlay)
Exhibition	Between 14 November 2017 and 8 January 2018 Further notification of proposed changes to the Amendment was given between 12 March and 12 April 2019
Submissions	Number of Submissions: 131 Submissions in response to further notification (2019): 15

Panel process	
The Panel	Dalia Cook (Chair) and Debra Butcher, appointed 9 August 2018
Directions Hearing	Leongatha, 3 September 2018
Panel Hearing	Leongatha, 12 and 13 November 2018 Video link, 27 May 2019
Site inspections	Unaccompanied, 14 and 15 November 2018
Citation	South Gippsland PSA C90 [2019] PPV
Date of this Report	1 July 2019

Executive summary

(i) Summary

South Gippsland Shire includes many diverse settlements, with a high proportion that benefit from coastal, forest or farmland settings. They provide opportunities for a range of land use, including agriculture, housing and commercial activities. Many people choose to live and work in these settlements for lifestyle reasons.

Key issues identified in the existing South Gippsland Planning Scheme include the need to protect settlements in the face of increasing redevelopment pressure, including more intensive land use, especially those with coastal and environmental values. The South Gippsland Planning Scheme expressly proposes further demarcation of settlement boundaries.

South Gippsland Planning Scheme Amendment C90 seeks to implement outcomes of the *South Gippsland Housing and Settlement Strategy, September 2013* to strengthen applicable planning provisions and to clarify expectations and opportunities for existing settlements.

A central part of the Amendment is a proposed change to local planning policy to reflect a desired housing and settlement hierarchy, including a Framework Plan for each settlement.

Another integral aspect is the proposal to include land within areas identified by South Gippsland Shire Council as 'old and inappropriate subdivisions' within a Restructure Overlay, to be governed by an Incorporated Document with an applicable Restructure Plan for each settlement.

The Amendment is very detailed and has had a long gestation. Extensive public exhibition was undertaken and a substantial number of submissions were received in respect of a wide variety of settlements and individual properties.

Council formulated a revised Incorporated Document while preparing for the Panel Hearing, seeking to improve the operation of controls for land in the Restructure Overlay. The Panel provided Council with an opportunity after the Hearing to redraft components of this document to overcome perceived deficiencies and to improve its intended functionality.

Council submitted an updated version of the Incorporated Document with changes to the proposed Restructure Plans and township boundaries. It also provided an updated version of proposed local policy which was intended to be 'policy neutral'.

The Panel directed further public notification of these documents to all people within affected townships and the proposed Restructure Plan Overlay to enable landowners and the community to consider and respond to the proposed changes.

Key issues raised in submissions from all stages of exhibition and notification included:

- appropriate settlement boundaries and the delineation of various elements within settlement Framework Plans
- the Amendment's response to environmental risks and to equitable treatment of settlements across the municipality
- requests for site specific rezoning or road closures

- concern about proposed Restructure Plans and their effect on the fair and equitable use and development of land
- effects of the Incorporated Document on land owners, including requirements to consolidate land before certain land uses or development could be permitted.

The Panel has broadly considered the Amendment as a whole, although it acknowledges that its identified role is to evaluate and make recommendations in respect of submissions referred to it.

An underlying issue pertaining to strategic justification for the Amendment is the extent of consistency between it and state planning policy. There is generally a high level of consistency in this respect, although the Panel has made targeted suggestions in its conclusions to address existing deficiencies that relate directly to the subject matter of the Amendment.

The Panel concludes:

- The strategic work underpinning the Amendment is generally competent. Further improvement would involve revising its form and content and the quality of its mapping. It is unclear whether the further work undertaken by Council in 2019 is truly neutral in effect, and this should be confirmed before adopting the Amendment in its preferred final form.
- It is appropriate to update local policies to provide detailed guidance for the preferred future of each settlement. However, caution should be exercised when amending local policies in Clause 22.05 and 22.06 since aspects of these existing provisions raise potential inconsistencies with state policies in respect of rural land.
- The proposal to introduce Framework Plans for identified settlements is supported, subject to Council's preferred changes recorded in this Report and further recommendations of the Panel in response to submissions.
- The proposed application of Restructure Plans to subdivisions identified as 'old and inappropriate' is broadly justified and consistent with planning policy, subject to the Panel's recommendations in respect of particular Restructure Lots.
- The use of Clause 51.01 Specific Sites and Exclusions together with an Incorporated Document is necessary and appropriate since the controls of the underlying zone are proposed to be varied to apply to Restructure Lots.
- The Panel supports some key aspects of the Incorporated Document in the form discussed at the Hearing, such as the requirement to consolidate land before a permit could be granted to use identified land for a dwelling. However, other elements of the draft Incorporated Document remain either problematic or not fully resolved, such as the extent of Council's capacity to approve changes from Restructure Plans. The Panel still finds the draft document difficult to read and apply, even in the most recently revised form.
- More specifically, the Panel does not support the most recent proposed suite of changes to the Incorporated Document to require land to be consolidated in accordance with a Restructure Plan before any permit-required use could be carried out. Likewise, even in the absence of express opposition, it does not support the notion of identifying specific Crown land properties for 'accommodation prohibited' lots as opposed to 'no dwelling development'. The Panel considers these elements do not represent a balanced approach to the application of planning policy and other

contextual considerations. The Panel provides more detailed recommendations as to the proper operation of the document in Chapter 6 of this Report.

- Council or the Minister for Planning should consider whether any further public notification is warranted as a result of the post-exhibition changes proposed by Council to the Amendment or changes suggestions by the Panel.
- Given the ambit and effect of the Incorporated Document, it would be prudent for Council to obtain legal advice in respect of its form and content before it considers whether to adopt the Amendment.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel makes the following recommendations:

1. **Adopt Amendment C90 to the South Gippsland Planning Scheme as exhibited subject to the recommendations outlined in this Report.**

Make the following changes to the exhibited Municipal Strategic Statement:

2. **At Clause 21.17-9 under the heading 'Landscape and Built Form' amend the first bullet point in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.**
3. **At Clause 21.09-1 under the heading 'Transport' amend local planning policies pertaining to 'flexible transport options' in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.**
4. **At Clause 21.08-11 and 21.08-12 amend local planning policies pertaining to the Great Southern Rail Trail and Grand Ridge Rail Trail in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.**
5. **At Clause 21.17-3 under the heading 'Yanakie' amend local planning policies to reference 'small scale' tourist development in place of 'self contained' tourist development in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.**

Make the following changes to the exhibited Amendment documents:

6. **Update all exhibited Amendment documentation to comply with the Ministerial Guideline on the Form and Content of Planning Schemes.**
7. **Update the exhibited policy and format and detail of all relevant mapping within the Amendment (including Framework and Restructure Plans) to improve accuracy relative to the cadastre base and clarity in a way that is policy neutral, subject to the further recommendations in this Report about policy and mapping changes.**
8. **Consider whether further public notification and an opportunity for further public participation is required before the Amendment is progressed as a result of updates to the Amendment documentation.**
9. **Remove reference to policy documents and guidelines that have not been the subject of public exhibition or are no longer current.**

Make the following changes to the exhibited Local Policies:

10. **At exhibited Clause 22.05, delete the heading "*Development of lots in Old and Inappropriate Subdivisions*" and its associated policies.**

11. **At exhibited Clause 22.05, under the heading "*Application requirements*", delete the last paragraph which requires applications for a dwelling where the Restructure Overlay applies to meet the application requirements of the Incorporated Document.**

12. **Replace the use of the words "*Old and Inappropriate Subdivisions*" at exhibited Clauses 22.05, 22.06 and 22.07 with the words "*land within the Restructure Overlay*" as appropriate.**

Make the following changes to the exhibited Clause 21 Framework Plans:

14. **Extend the Fish Creek settlement boundary to include the land at 2 Sheedy Road, Fish Creek, as shown on the amended Framework Plan (Document 18A).**

15. **Extend the Town Centre designation on the Fish Creek Framework Plan to include the land at 2-37 Falls Road, Fish Creek, as shown on the amended Framework Plan (Document 18A).**

16. **Amend the Strzelecki Framework Plan to show the northern settlement boundary as shown on the amended Framework Plan (Document 18A) and identify the existing church and to show the church located at the eastern edge of the settlement.**

17. **Amend the Framework Plans for Bena, Kardella and Ruby in accordance with the updated Framework Plans (Document 18A).**

18. **Amend the Framework Plan for Buffalo in accordance with the updated Framework Plan (Document 18A), provided the further bushfire assessment to be undertaken for Restructure Lot 1 demonstrates it is possible to site a dwelling on the Lot.**

19. **Amend the Leongatha Framework Plan to exclude land at 170 Simons Lane from the settlement boundary in accordance with the amended Framework Plan (Document 18A).**

20. **Amend the Venus Bay Estate 1 Framework Plan in accordance with the updated Framework Plan (Document 18A), subject to the change being consistent with Amendment C109.**

In relation to the exhibited version of the *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire August 2017* proposed Incorporated Document:

21. **Council confirm whether all current landowners affected by the Restructure Overlay received targeted notification in 2019 and consider whether further notification processes are required before progressing the Amendment such as notice directed by the Minister for Planning.**

22. **Update the exhibited version of *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire, August 2017* as follows before incorporating it in the South Gippsland Planning Scheme as an Incorporated Document:**

a) **clarify the ongoing operation of the requirements of relevant overlay controls and the underlying zone to obtain a planning permit for the construction of a building or carrying out of works, even after the consolidation of land in accordance with the Restructure Overlay.**
b) **ensure that existing uses referred to in Clause 63 of the South Gippsland Planning Scheme are preserved by the Incorporated Document.**
c) **update the list of exemptions for structures (buildings) as proposed in version 3 and confirm that works may be carried out without prior lot consolidation.**
d) **consider whether the provisions of the Restructure Overlay provide sufficient flexibility in respect of roadways adjacent to Restructure Lots, or whether the model proposed in version 2 should be progressed to the extent required.**
e) **provide a degree of flexibility to modify the layout of Restructure Lots generally as proposed in version 2 by adopting the terminology "generally in accordance with".**
f) **Reinstate previous application requirements from version 2 as relevant to require a response to the objectives of the Incorporated Document and the purposes and decision guidelines of the Restructure Overlay.**

Make the following changes to the exhibited Restructure Plans included in *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire August 2017*:

23. **For Figure 17, Darlimurla, delete exhibited Restructure Lot 5 and renumber exhibited Restructure Lot 6 as Restructure Lot 5 and realign its south west boundary to match the title boundary as shown in the amended Incorporated Document (Document 18B).**

24. **For Figure 14, Hedley - Salmon Road, exclude the land in Restructure Lot 1 from the Restructure Overlay if it is consolidated before Amendment C90 is approved. Alternatively, if the consolidation does not occur before Amendment C90 is approved, include Figure 14 as shown on the amended Restructure Plan (Document 18B).**

25. **For Figure 4, Jeetho – Wettenhalls Road, amend the boundaries of Restructure Lots 1 and 2 generally in accordance with the amended Restructure Plan (Document 18B).**

26. **For Figure 7, Jumbunna, exclude land comprising Restructure Lots 21 and 22 from the Restructure Overlay (part 76 Rees Road, Jumbunna) as shown on the amended Incorporated Document (Document 18B).**

27. **For Figure 9, Meeniyan West, delete proposed Restructure Lot 2 from the Restructure Overlay (39 McIlwaine Street, Meeniyan West) as shown on the amended Incorporated Document (Document 18B).**

28. **For exhibited Figure 5, Outtrim:**
    a) **realign the boundary of Restructure Lot 8 to reflect the ownership of existing structures if settlement of the property is completed before the Amendment is approved.**

b) replace the Special Restructure Area with Restructure Lots 22 and 23 and an extended Lot 16, as shown on Figure 5 of the amended Incorporated Document (Document 18B).

c) amend Restructure Lot 9 to remove the road reserve described as R-1 on LP3952.

29. For the exhibited Incorporated Document, Outtrim:

a) include a requirement for access to be provided from Restructure Lot 17 to Lot 1 on Title Plan 164640, as addressed in the amended Incorporated Document (Document 18B).

b) include a requirement for further strategic work to be undertaken in relation to Lomagnos Road, as addressed in relation to Restructure Lot 21 of the amended Incorporated Document (Document 18B).

30. For Figure 19, Port Welshpool:

a) amend Restructure Lot 7 of the Incorporated Document to remove the property fronting Adams Road (115 Adams Road) and include the rear (eastern) property currently forming part of Restructure Lot 7, as well as the property at 300 Telegraph Road in Restructure Lot 7. A vinculum notation should be considered.

b) amend Restructure Lot 9 to delete a road reserve, as shown on the revised Incorporated Document (Document 18B).

31. For Figure 15, Toora:

a) exclude the land within Restructure Lot 7 from the Toora Coastal Restructure Plan and Overlay (21 Acklands Road, Toora) as shown on the amended Incorporated Document which was the subject of targeted notification in 2019.

b) remove six sections of road reserves to the coast from various Restructure Lots, as shown on the amended Incorporated Document (Document 18B).

32. For Figure 16, Buffalo, amend the Restructure Plan in accordance with the updated Incorporated Document (Document 18B), subject to further assessment confirming that new residential development can meet the relevant requirements of the South Gippsland Planning Scheme in relation to bushfire risk and management.

33. For Figure 20, Jacks Road-Stony Creek, amend the status of Restructure Lot 1 to be identified as a 'no dwelling development lot', as shown on the revised Incorporated Document (Document 18B).

34. For Figure 6 Korumburra-Bena Road-Whitelaw, amend the mapping and accompanying table to clearly show the road reserves that form part of Restructure Lot 1.

Further recommendation

13. Council consider undertaking a fulsome review of Clauses 22.05 and 22.06 of the South Gippsland Planning Scheme pertaining to Rural dwellings and Rural subdivision to ensure their consistency with the Planning Policy Framework and established principles (including Planning Practice Notes) relating to the form and scope of a local planning policy.

1 Introduction

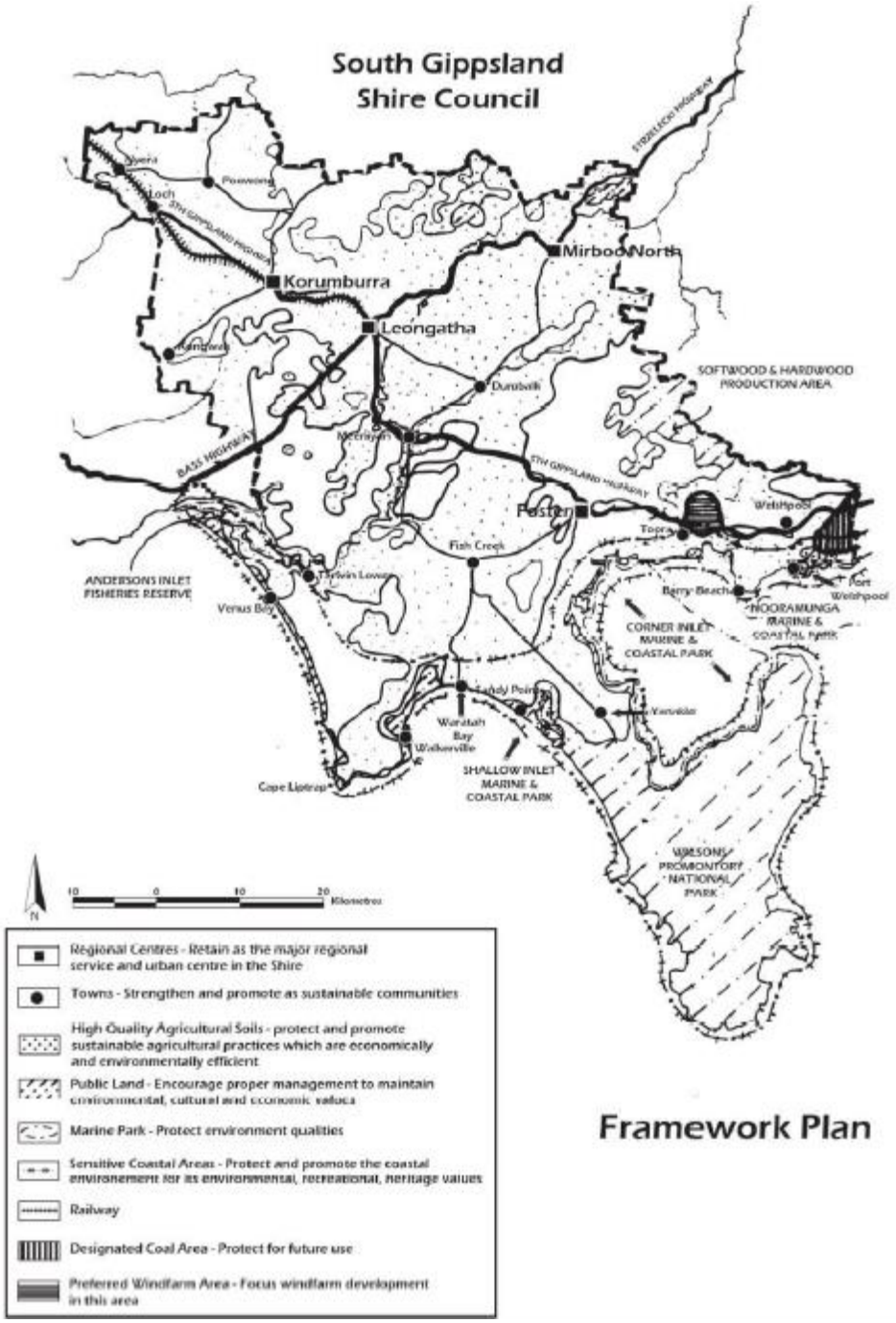
1.1 The Amendment

Amendment C90 to the South Gippsland Planning Scheme (the Amendment) seeks to implement key recommendations of the *South Gippsland Housing and Settlement Strategy, September 2013* (Strategy). It proposes to:

- amend the Municipal Strategic Statement (MSS) to implement the settlement hierarchy and policies recommended by the Strategy
- amend Clauses 22.05 and 22.06 of the South Gippsland Planning Scheme (planning scheme) to update local policies on Rural dwellings and Rural subdivision in light of the proposed application of the Restructure Overlay
- amend the Schedule to Clause 45.05 (Restructure Overlay) to insert Schedules for Restructure Overlay Areas 1- 21. This would introduce Restructure Plans for Venus Bay (Juno Road, Aitken Avenue and Black Avenue), Jeetho, Outtrim, Whitelaw, Jumbunna, Tarwin, Meeniyan West, Korumburra, Hoddle, Bennison (Durston Road and Port Franklin Road), Hedley (Salmon Road and Todds Road), Toora Coastal Area, Buffalo, Darlimurla, Port Welshpool, Stony Creek and Dollar
- include properties to be included in the Restructure Overlay within the Specific Sites and Exclusions particular provision
- update the Schedule to Clause 61.03 to include mapping of Restructure Overlay properties
- insert an Incorporated Document titled *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire August 2017* (Incorporated Document) and to delete an expired Incorporated Document relating to 176 Simons Lane Leongatha, November 2013
- rezone particular sites at Jumbunna from Farming Zone to Township Zone and delete the Environmental Significance Overlay (Schedule 5 - Areas susceptible to erosion)
- remove some Road Closure Overlays from identified land in Jumbunna due to redundancy
- rezone identified land in Venus Bay from Commercial 1 Zone to Township Zone, apply the Restructure Overlay, the Design and Development Overlay (Schedule 5) and the Environmental Significance Overlay (Schedule 7 - Coastal Settlements) and delete the Environmental Significance Overlay (Schedule 3 - Coastal Settlements) to implement the Venus Bay Framework Plan and associated policies.

Figure 1 contains the Framework Plan for the Shire, proposed to be included in Clause 21.01 of the planning scheme, which shows the various towns and localities affected by the Amendment.

Figure 1 Draft Framework Plan



1.2 Background to the Amendment

On 25 September 2013 Council resolved to adopt the Strategy. The Strategy consists of four components - Housing and Settlement Strategy; Urban Design Frameworks for 17 settlements; a Shire-wide review of the Rural Living Zone and the restructure of 11 old Crown townships. This work was undertaken by planning consultants Planisphere, guided by a project group comprised of Council staff and Councillors. It is currently included as a Reference Document in the planning scheme at Clause 21.16.

The Strategy addresses the projected housing needs of the Shire, including urban residential land supply and 'lifestyle' land supply and considers those in the context of other important considerations including protection and retention of agricultural land, the provision of infrastructure and services, the provision of and access to community services and environmental constraints and risks. The Strategy then identifies a Settlement Hierarchy and Community Facilities Framework as the foundation for settlement framework plans for 36 towns and urban design frameworks for 17 settlements, where no strategic plans previously existed.

The Strategy also considers a number of proposals for land to be rezoned to the Rural Living Zone, taking into account Council's *Rural Land Use Strategy 2011* (RLU Strategy). The Strategy addresses six different potential investigation areas and makes appropriate recommendations to consider support for rural living or 'lifestyle' lots. The Strategy then analyses 11 townships/localities where the restructure of historical subdivisions is proposed.

The recommendations of the Strategy provide the foundation for proposed policy changes in the Amendment and the application of proposed Restructure Plans.

On 24 August 2016, Council requested authorisation from the Minister for Planning to prepare the Amendment. This was granted on 31 October 2016 and public exhibition followed.

On 23 August 2017 Council resolved at its Ordinary Meeting to extend the Restructure Overlay and prepare additional Restructure Plans for Buffalo, Darlimurla, Dollar, Hedley, Port Welshpool, Stony Creek and Toora. It also proposed to change certain planning provisions and the explanatory report which resulted in re-authorisation on 13 October 2017 with full re-exhibition.

Council's resolution also included a *"request that special consideration be given [by the Panel] to the Restructure Overlay component of the planning scheme associated with the Port Welshpool Restructure Overlay, the objectors submissions, and their wish to be exempted"***.**

Throughout the process, some submitters emphasised that Council had not consulted adequately or fairly with land owners and residents in these townships before nominating them as a "late addition" to the proposed Restructure Overlay. They queried the validity of the process and emphasised the need for "special consideration" to be given to Port Welshpool in particular.

1.3 Procedural issues and position of referral authorities

(i) Country Fire Authority involvement

Pre Hearing position

Council consulted the Country Fire Authority (CFA) about the Amendment as part of the public exhibition process. The CFA is an expert authority that is also a determining referral authority under Clause 66 of the planning scheme for relevant permit applications.

By letter dated 16 February 2018[1], it responded with preliminary comments that the Explanatory Report briefly addressed bushfire risk but did not specifically identify what these

[1] Attachment 2.1.2 to Council Meeting Agenda 25 July 2018.

risks are for affected areas, what considerations (including hazards) apply or how bushfire considerations have been addressed.

It offered in principle support for the use of Restructure Plans to manage 'old and inappropriate subdivisions'. However, at that stage, it identified that the impact of current bushfire policy had not been considered and strongly recommended this be addressed before the Amendment is progressed, especially in relation to the proposed Incorporated Document.[2]

It was concerned that at that time, the proposed consolidation of lots and eventual lot layout had not considered bushfire impacts or potential bushfire protection methods. It recommended that "*each Restructure Plan should be assessed in relation to the surrounding bushfire hazard, bushfire risk and whether the consolidated lot layout would be appropriate in a bushfire policy context*". This was in the context of the CFA's view that there would be "*little utility to proceed with an approach to restructuring without assurance that a restructured lot can actually be developed under the Bushfire Management Overlay*".

The CFA also noted the impending policy review of the Municipal Strategic Statement (MSS) for the Shire and recommended early engagement with it about relevant issues.

Further work and Hearing position

Anne Coxon, Victorian land use planning coordinator, presented at the hearing on behalf of the CFA in response to a request by the Panel for its participation. She explained that subsequent to its initial letter, the CFA had undertaken further work in respect of each proposed Restructure Lot to assess its in principle level of bushfire risk, the broad nature of the bushfire hazard and its potential capacity to provide bushfire mitigation measures on site.

The CFA emphasised the major policy change to bushfire planning that occurred in late 2017, one component of which was a revised state policy at Clause 13.02-1S providing an objective:

> *To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.*

Strategies for the protection of human life:

- *Prioritis[e] the protection of human life over all other policy considerations.*
- *Direct … population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.*
- *Reduc[e] the vulnerability of communities to bushfire through the consideration of bushfire risk in decision making at all stages of the planning process.*

The CFA supported the Amendment overall since it considered that there would be no net increase in bushfire risk. In summary, it regarded the Amendment as being more restrictive rather than facilitative of development because it would significantly reduce the number of lots able to be developed for habitable uses.

[2] It suggested that a qualified bushfire consultant be engaged to assist Council with this work.

The CFA recognised that it was unlikely that a full bushfire assessment would be conducted for sites to be consolidated as part of this Amendment. Consequently, it assessed the properties and determined that they could achieve a 'Low' Bushfire Attack Level and could indicatively demonstrate that each Restructure Lot could meet standards for defendable space and relevant construction standards. It confirmed that a landscape bushfire assessment would be required when individual permit applications were made. Therefore, it confirmed that the Amendment would direct development to what it regarded as "*low risk locations*" and would "*mitigate community risk to an acceptable level*".

(ii) West Gippsland Catchment Management Authority approach

Pre Hearing position

The West Gippsland Catchment Management Authority's (CMA) initial response to the Amendment identified matters requiring further attention and resolution in respect of flood hazards for Restructure Lots as well as for affected settlements more broadly.

By letter dated 5 January 2018[3], it advised that:

- it supports any outcome that recommends limiting growth in areas subject to inappropriate flood hazard and supports the general intent of the Amendment to minimise flood risks and to protect environmental significance of floodplains
- before the Land Subject to Inundation Overlay is used to define the areas where dwellings should be excluded, further work should be carried out to determine which properties within that overlay are subject to an inappropriate flood hazard
- nevertheless, the Land Subject to Inundation Overlay does not identify the flood hazard to individual properties where the risk is driven by flooding of site access routes. This should be explored further.

The CMA also provided comment regarding particular settlements where the only access road to the settlement would be affected by flooding, therefore all land within the settlement would fail to meet the authority's flood hazard criteria. It regarded opportunities for further dwellings in these settlements as limited on this basis.

These settlements include Port Welshpool, Sandy Point, Venus Bay and Waratah Bay. Tarwin Lower was identified as a settlement where development would only be supported if flood hazard criteria could be met. An attachment to the CMA's submission included a summary of the assessment of flood depth criteria for each Restructure Lot, whether it would support a dwelling or the conditions for its support for a dwelling.

(iii) Hearing position and future work

The CMA was requested by the Panel to attend the Hearing to provide it with a more detailed response to its submission to the Amendment.

Mr Dunn confirmed that the CMA had changed its position in respect of aspects of the Amendment after working with Council officers and additional information bearing on flood

[3] Attachment 2.1.2 to Council Meeting Agenda 25 July 2018.

risk of Restructure Lots.[4] It refined its position by providing a list of properties where the flood hazard criteria would not support a dwelling, such as where safe access or building safety criteria could not be met.[5]

This was considered an important part of the Amendment, being the opportunity to recognise certain types of development that would not be supported in the planning scheme.

Overall, the CMA advised in terms of managing the flood risk associated with access to isolated settlements such as Venus Bay, it recommends Council address this as part of an upcoming process associated with formulating a detailed Coastal Strategy for the Shire with CMA input.

(iv) Draft Incorporated Document

Council proposed a number of versions of the Incorporated Document throughout the progress of the Amendment, including during and after the Hearing.

The Panel has numbered key versions of the Incorporated Document for convenient reference.

The version accompanying the re-exhibited Amendment is numbered version 1. The version presented just before the Hearing for "discussion purposes" is numbered version 2. Copies of this version were sent to all parties to the Hearing but no formal or broader notice was given at that stage.

Following the Hearing, version 3 was prepared in response to Panel Directions dated 30 November 2018.

Council also proposed changes to other aspects of the Amendment documentation including what it described as a 'policy neutral' change to the form and content of planning policy and some discrete changes to certain township boundaries (accompanying version 3). A number of lots that had been consolidated recently were also identified for removal from the proposed Restructure Overlay.

Affording natural justice

In light of changes proposed by Council, the Panel turned its mind to who it considered may be materially affected having regard to its obligation to provide natural justice. It directed targeted notification of these documents to all parties to the Amendment proceeding, to all landowners in the proposed Restructure Overlay area and to owners of properties that may be affected by proposed changes to township boundaries.

An express opportunity was given to these people to make submissions. In response, 15 additional submissions were received and referred to the Panel.

Since a hearing had already taken place, Council requested these further submissions and the merits of the proposed changes be considered by the Panel 'on the papers'.

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4 This information included defined flood level information, land level information including Lidar to plus/minus 100mm. The CMA advised that this information could potentially change if a detailed survey of flood levels was undertaken.

5 By email to Council dated 21 September 2018. A correction was made orally at the Hearing to land in Stony Creek that should be a "no dwelling development lot".

The Panel considered this approach would not be consistent with its obligation under the *Planning and Environment Act 1987* to give all objectors a "reasonable chance to be heard", so it convened a further hearing to consider issues arising from the amended documentation. That hearing took place by video conference to improve accessibility and reduce cost for parties.

1.4 Issues dealt with in this Report

The Panel has considered all written submissions made in response to the exhibition and further notification of the Amendment, observations from site visits and submissions and other material presented to it during the Hearing.

Its key focus has been changes proposed to planning policy including the way township boundaries have been drawn, the content of the Incorporated Document and appropriateness of the Restructure Plans for identified settlements.

The Panel has reviewed a large volume of material. The Panel has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Changes to local planning policy
- Settlement Framework Plans and settlement boundaries
- Use of planning scheme provisions
- Is the form and content of the Incorporated Document appropriate?
- Restructure plans.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report. The Panel considers the interaction between the Amendment, planning policy, zone and overlay controls, relevant strategies and Ministerial Directions.

2.1 Planning Policy Framework

(i) State planning policies

Council submitted that the Amendment is supported by the following key state planning policies:

- Clause 11.01-1S Settlement, which contains a number of strategies, including to "guide the structure, functioning and character of each settlement taking into account municipal and regional contexts and frameworks" and to "create and reinforce settlement boundaries". The Framework Plans proposed in Clauses 21.12 to 21.19 clearly delineate settlement boundaries.
- Clause 12.02-1S Protection of coastal areas, recognises the value of coastal areas to the community, seeks to conserve and enhance coastal areas and ensure sustainable use of natural coastal resources. The Amendment supports this clause by defining settlement boundaries for coastal villages to prevent expansion into rural landscape buffers and areas of high conservation value. It also proposes to limit development in a number of coastal restructure areas.
- Clause 13 Environmental risks and amenity, seeks to ensure that strategic planning documents, planning scheme amendments and all applications properly assess environmental risks and especially include appropriate bushfire protection measures to prioritise human life. Council considers the Amendment aligns with these policy directions by delineating settlement boundaries and configuring Restructure Lots based on a risk management approach, including consideration of flooding and bushfire issues. A number of lots have been identified as "no dwelling development lots" accordingly.

  Clause 14.01-1S Protection of agricultural land, which has the objective "*to protect the state's agricultural base by preserving productive farmland*". A relevant strategy is to "*give priority to the re-structure of inappropriate subdivisions where they exist on productive agricultural land*". The Amendment will establish settlement boundaries and Restructure Plans to assist in protecting South Gippsland Shire's agricultural land which is of state significance.
- Clause 14.02-1S Catchment planning and management and Clause 14.02-2S Water quality, which emphasise protection of water quality, potable water catchments, waterways and the marine environment. Similar objectives are provided in Clause 19.03-3S Water supply, sewerage and drainage. The Amendment would restrict development on land subject to inundation such as Corner Inlet and Andersons Inlet, as well as land within catchments that supply potable water.
- Clause 16.01-5S Rural residential development, contains strategies such as to "*manage development in rural areas to protect agriculture and avoid inappropriate*

rural residential development' and to "*demonstrate need and identify locations for rural residential development through a housing and settlement strategy"*. This policy also seeks to discourage development of small lots in rural zones for residential use or other incompatible uses and to encourage consolidation of existing isolated small lots in rural zones. The Amendment is a direct response to this policy.

- Clause 17.02-1S Business, seeks to aggregate commercial facilities to provide net community benefit, accessibility and efficient use of infrastructure. Clause 17.03-1S Industrial land supply, seeks to ensure an adequate supply of industrial land in appropriate locations. The Amendment responds to these policy directions by identifying and consolidating commercial activity in the Framework Plans relevant to the function of each settlement and by also encouraging marine related economic activity in Port Welshpool and Port Franklin as well as by encouraging tourism in association with agricultural production and environmental attractions.
- Clause 19.02-4S Social and cultural infrastructure, seeks to provide fairer access to social and cultural infrastructure. The proposed settlement hierarchy and Framework Plans will guide the provision of social and physical infrastructure in an equitable and accessible way, with growth supported in settlements locations where efficiency can be maximised.

The Panel agrees with Council's assessment that the Amendment is generally well aligned with recently introduced or refined provisions of the Planning Policy Framework (PPF). The two key components of the Amendment - the delineation of settlement boundaries for various townships and the application of Restructure Overlays to 'old and inappropriate subdivisions' have an important strategic planning function to protect agricultural land and environmental values whilst providing opportunities for managed growth in suitable locations.

(ii) Regional planning policies

There are also a number of regional policies not specifically addressed in Council's submission but which the Panel regards as relevant to this Amendment, including:

- Clause 11.01-1R Settlement – Gippsland, which outlines a range of strategies, including supporting the role of towns and small settlements by providing services and recognising their relationships and dependencies with larger towns. The implementation of the Settlement Strategy forwards this policy.
- Clause 12.03-1R High value water body assets, which identifies the need to minimise the impact of urban growth on high value water bodies, including Corner Inlet, and their source rivers. The Panel considers this is supported both by the control of development through the Settlement Strategies and Restructure Plans.
- Clause 14.01-1R Protection of agricultural land. The Panel considers the Amendment generally supports this policy but would benefit from potential refinement in respect of a limited number of Restructure Lots which have the opportunity to be consolidated with more sizeable adjacent farmland in the same ownership.

(iii) Municipal Strategic Statement

Council submitted the Amendment supports or refines the MSS as follows:

- Clause 21.05 – Settlement (proposed to become Clause 21.02 as part of this Amendment) applies a hierarchy to the municipality's settlements by categorising them into levels of function, service, infrastructure and environmental setting to implement key recommendations of the Strategy.
- Clauses 21.12 to 21.19 - Council submitted that the Amendment proposes appropriate restructure of these clauses by ensuring that settlements and their policies are grouped according to the settlement hierarchy identified for each location. This ranges from 'Municipal Centre' down to 'Locality'. Existing policies were transferred where possible.
- New policies are inserted to cover 19 additional settlements resulting in 21 new Framework Plans; including revisions to existing Framework Plans for Nyora, Port Welshpool and Venus Bay Estate 2.
- Clause 21.05 Natural Resource Management (currently Clause 21.08) would seek to improve guidelines for the development of dwellings in old Crown township areas.
- Clause 21.10 Housing (proposed to become Clause 21.07) would refine policy considerations to encourage sustainable design, siting and diversity to meet accommodation needs of the current and future population.
- Clause 21.11 Economic development (proposed to become Clause 21.08) would update policy to encourage and provide for primary industries and facilities such as ports.
- Clause 21.15 would separate landscape character areas policies from local areas policies and relocate them to a new Clause 21.20.
- The Reference Document list would be relocated from Clause 21.16 to re-numbered Clause 21.21, removing repetition.

The Panel considers that the Amendment generally supports key elements within the existing MSS and would make appropriate changes to improve its future application.

However, before adopting the Amendment, the Panel recommends that Council update the form and content of the planning scheme in line with the relevant Ministerial Direction and update the quality of the originally exhibited mapping in a policy neutral way, subject to detailed Panel recommendations for specific Framework Plans.

(iv) Local Planning Policies

A number of existing local policies are of particular relevance to this Amendment, as addressed by Council in its submission.[6]

[6] Local Planning Policies will be translated or phased out when the current planning scheme is converted to the new format created by VC148. However, the Panel was advised that this process is likely to take some time for South Gippsland and that this Amendment (since authorised) could progress in the normal way in the interim.

Clause 22.05 Rural dwellings

The policy basis provides:

> *South Gippsland Shire contains some of the most productive agricultural areas in Victoria … Agriculture and its associated processing and service industry underpin the Shire's economy ... With issues of climate change and water scarcity at hand, there is likely to be increasing demand for the Shire's high quality agricultural land from producers in less fertile areas. Existing farming activities in the Shire will need to have the capacity to grow and expand and will require access to affordable land unencumbered by unwanted infrastructure.*
>
> *The settlement and subdivision history of the Shire has left a legacy of small lots scattered amongst larger farming lots. There are approximately 12,000 lots in the Farming Zone, including a large number of small lots in old Crown Townships and remnant vacant lots arising from early subdivisions. These lots are often isolated, or in strips along road sides and surrounded by agricultural uses. Multi-lot farms (tenements) are the most common structure of land tenure in the Shire, with commercially viable production areas being formed by the aggregation of smaller lots.*
>
> *The Shire's significant environmental and landscape assets make the area attractive for rural residential lifestyles ... There is a significant level of ad hoc rural lifestyle development already in the rural areas of the Shire. The conversion of agricultural land into rural residential land use activities results in a net loss to agriculture due to permanent land use changes. In the absence of a planned approach to rural residential development, detrimental impacts on the landscape, environmental and agricultural values of the Shire may arise*.

Council highlighted relevant objectives including:

- *to discourage the proliferation of dwellings not associated with agriculture on lots over 4.1 hectares*
- *to ensure that the development of dwellings on rural land does not prejudice existing agricultural activities on surrounding land*
- *to retain the open farmed landscape as the defining visual characteristic of the Shire*
- *to ensure the cost-effective servicing of towns and communities across the Shire by avoiding the impacts of a dispersed population base.*

The policy specifically provides that granting a planning permit for a dwelling in the Farming Zone is strongly discouraged unless:

- the dwelling is proposed for rural residential purposes on a lot less than 4.1 hectares
- the dwelling is proposed in association with agriculture on a lot greater than 4.1 hectares in area, or
- the dwelling is proposed on a lot that is predominantly covered by remnant native vegetation.

The policy also requires that any dwellings proposed on lots over 4.1 hectares clearly demonstrate they are genuinely required for long term agricultural activity and will result in a net benefit to agricultural productivity.

The current policy seeks to prevent a permit being granted to use land within a historic Crown township or settlement for a dwelling. The Amendment would alter elements of this policy to reflect the Restructure Overlays proposed.

The *RLU Strategy* is a policy reference for this policy and the following policy. Likewise, the *South Gippsland Housing and Settlement Strategy, 2013* is already a reference document for both policies.

Council explained its current approach to permit applications to use land for a dwelling in farming zones. Essentially, if the land is less than 4 hectares, is considered unlikely to be used for viable agriculture and is within an area that can sustain an existing dwelling in terms of neighbourhood character, there is a high likelihood of a permit being granted. Council regards this as consistent with its local policy in Clause 22.05.

However, Council explained that it usually strongly opposes permit applications for a dwelling on land between 4.1 hectares and 40 hectares (the latter being the size where land can be used for a dwelling without a permit in the Farming Zone).

A somewhat different approach has been taken for Restructure Lots.

Council submitted that the Amendment is consistent with Clause 22.05 since the intent of the Restructure Plans is to ensure that lots in the Farming Zone are of a suitable size to allow for productive agricultural activities, protection of property and life and ensuring that lots can be adequately serviced and can contain and treat their own waste without impacting on water supply catchments.

For the most part, the Panel considers that the provisions of the Amendment, in particular, the delineation and application of Restructure Plans, are generally consistent with the policy directions at Clause 22.05.

However, whilst acknowledging that Clause 22.05 is an existing provision of the planning scheme, the Panel has some concerns about the consistency of aspects of that policy with state planning policy, for example, Clauses 14.01-1S and 16.01-5S. These concerns, and the implications of these concerns in relation to the Amendment, are discussed further in Chapter 3.

Clause 22.06 Rural subdivision

In its submission, Council outlined the policy basis for Clause 22.06 as follows:

> *The rural areas of South Gippsland have experienced a high level of land fragmentation, arising from both historical settlement patterns and less stringent planning policies under earlier planning schemes. Left unchecked, further fragmentation through land subdivision could have considerable implications for agricultural production, landscape, and the servicing of populations in outlying areas.*

> *… The subdivision of land into smaller lots, including house lot excisions, can have ongoing implications for the supply of affordable agricultural lots by driving up land prices beyond the productive value of the land.*
>
> *South Gippsland already has a considerable supply of lots at a range of sizes, such that further subdivision for genuine agricultural reasons will rarely be necessary. Many areas that have experienced high levels of fragmentation may require consolidation or restructure through boundary realignments in order to create economically competitive land units.*
>
> *Likewise, expanding farming businesses may find it necessary to remove surplus dwellings from the land through house lot excisions. There is a compelling need for clear and robust planning criteria around such practices in order to ensure the fair, sustainable and economic use and development of rural land.*

A key objective of this policy as highlighted by Council is "*to encourage the consolidation of rural lots*". The clause also includes policies relating to old Crown settlements and townships.

Council submitted that the Amendment was consistent with the provisions of Clause 22.06 since the Restructure Plans would create more appropriate sized lots having regard to zoning and environmental constraints.

The Panel agrees with Council that the Amendment aligns well with the objectives of this policy in seeking to limit the further fragmentation of rural land and to consolidate rural lots where possible. Further changes to this policy are discussed in Chapter 3.

Clause 22.07 Rural Activity Zone

Council submitted that the Amendment responds seeks to clarify the tourism potential of 'old and inappropriate subdivisions'. This policy seeks to minimise risk from environmental hazards, negative impacts on landscape and environmental values. Changes are also proposed to this policy as part of the Amendment.

The Panel agrees with Council that the Amendment would implement the directions of this policy by seeking to minimise further fragmentation of agricultural land in the Rural Activity Zone, thereby assisting the protection of rural character and agricultural production. However, in reality, a reasonably confined number of Restructure Lots are included in this zone, which is also where policy directs tourism activities could be considered or encouraged.

(v) Other planning strategies or policies used in formulating the Amendment

***South Gippsland Housing and Settlement Strategy* 2013 (as amended)**

The Strategy was adopted by Council in 2013 and already forms a Reference Document in the Planning scheme. It was not clear to the Panel whether this strategy had previously been the subject of independent review by a Panel.

The Strategy provides a more detailed strategic basis for this Amendment, including Settlement Framework Plans and Urban Design Frameworks for 17 settlements. It also includes an Investigations Areas report considering whether to rezone land to Rural Living Zone in five settlements, as well as Restructure Overlay Investigation Areas for 11 settlements.

Page 3 of the Strategy provides the following strategic directions:

- *The larger settlements that are serviced by reticulated sewer will be the focus for growth in the Shire including Leongatha, Korumburra, Foster, and Mirboo North. These settlements will also be the focus for diversifying the municipal economy, particularly through industry and business.*
- *Growth will be directed and managed by the preparation of Settlement Structure Plans. This will ensure that future population communities are efficiently serviced by the necessary community and physical infrastructure that is established in larger settlements.*
- *Focusing growth in the larger settlements will ensure that development is managed in a way that will not encroach on productive agricultural land, negatively impact on environmental values, expose residents to hazards, or lead to pockets of isolated development.*
- *In the smaller settlements that do not have access to reticulated sewer, development will be encouraged only within the settlement boundary. The existing role, services and character of each settlement will be retained and enhanced in accordance with the relevant settlement Structure Plan or UDF.*
- *Demand for lifestyle residential development will be managed by ensuring an adequate supply of Low Density Residential Zone land on the periphery of larger settlements where this is consistent with structure planning and access to reticulated sewer is available. The rezoning of additional land into the Rural Living Zone will be limited to addressing zoning anomalies or conflicting land uses.*
- *The 2000 potential rural living lots identified for potential dwellings in the RLUS are considered to address the RLZ demand.*
- *In coastal areas development will be carefully managed in accordance with the Victorian Coastal Strategy and take into account the projected impact of climate change on low-lying coastal areas.*
- *The findings and directions of the RLUS will be supported by the HSS by defining settlement boundaries and focusing development within them. The HSS will aim to ensure an adequate supply of urban land for both residential and lifestyle residential development to reduce development pressure on agricultural land.*

The Panel considers these strategic directions form a sound basis for the Amendment that is consistent with state and local policy.

The Panel notes that some of the Restructure Plans in the Incorporated Document referred to at the Hearing are different to those in the Strategy for example, the approach taken to Outtrim. The version of the Restructure Plans included in the exhibited Incorporated Document (and subsequent iterations) form the basis for its consideration, not the versions included in the Strategy.

***South Gippsland Rural Land Use Strategy* 2011 (RLU Strategy)**

This is a Reference Document in the planning scheme. It underpins Clauses 22.05, 22.06 and 22.07 and was also supports the application of the Rural Activity Zone.

***South Gippsland Eastern Districts Urban Design Frameworks 2012* (as amended)**

This is also a Reference Document in the planning scheme and provides frameworks for Port Franklin, Toora, Welshpool and Port Welshpool. The Panel notes that the land use plans included in the Framework appears to be the foundation for the settlement plans for the four towns included in the current.

2.2 Planning scheme provisions

(i) Zones

The Farming Zone and Township Zone applies to many of the settlements addressed in the Amendment, with a more confined focus on the Low Density Residential Zone and Rural Living Zone.

Farming Zone

The Farming Zone (FZ) is applied widely throughout the Shire and its purpose includes:

- *To provide for the use of land for agriculture.*
- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

Aspects of the Farming Zone of particular relevance to this Amendment include:

- **Dwellings**. The use of land for a dwelling is as of right (no permit required) where it is the only dwelling on a lot, where the lot is at least 40 hectares in area and where the requirements of Clause 35.07-2 are met (relating to access and the provision of services). If the conditions cannot be met, a planning permit is required for such use.
- **Subdivision**. A minimum subdivision area of 80 ha applies (apart from in one location in Waratah Bay). Exceptions to this include a two lot subdivision to create a lot for

an existing dwelling, where the subdivision is a re-subdivision of existing lots and the number of lots is not increased.

- **Buildings and works**. A permit is required for buildings or works associated with a section 2 use unless a relevant exemption applies. These are especially relevant to the discussion about the Incorporated Document in Chapter 6 concerning discrete exemptions from permit requirements.
- **Decision Guidelines**. Matters specified include: whether the dwelling will result in the loss or fragmentation of productive agricultural land; whether the dwelling will be adversely affected by adjoining agricultural activities; whether dwelling will adversely impact adjoining agricultural activities the potential for the dwelling to lead to a concentration or proliferation of dwellings in the area and the impact of this on agricultural uses.

Township Zone

The Township Zone is within the suite of residential zones and includes a purpose "*to provide for residential development and a range of commercial, industrial and other uses in small towns"*. The Township Zone specifies few prohibited land uses. Use of land for a dwelling does not require a permit provided it meets servicing requirements.

This zone is widely applied to developed areas of some small towns in South Gippsland Shire. Rezoning is proposed in Jumbunna and Venus Bay as part of this Amendment.

(ii) Overlays

The Restructure Overlay is central to this Amendment. Other overlays that commonly apply to land within the nominated settlements pertain to environmental matters, including the Environmental Significance Overlay, Significant Landscape Overlay, Land Subject to Inundation Overlay and the Bushfire Management Overlay as discussed below.

The Road Closure Overlay is also proposed to be used for certain rights of way within this Amendment.

Restructure Overlay

The purpose of the Restructure Overlay includes:

- *To identify old and inappropriate subdivisions which are to be restructured.*
- *To preserve and enhance the amenity of the area and reduce the environmental impacts of dwellings and other development.*

Under the Restructure Overlay, a permit is required to subdivide land. Any subdivision must be "*in accordance*" with the Restructure Plan for the land listed in the Schedule to the Overlay.

A permit is also required to "*construct or extend a dwelling or other building"* (noting that 'works' do not trigger a planning permit under the overlay) and any permit must be in accordance with the Restructure Plan. Importantly, a permit is not required to construct or extend a dwelling or building if the lot is created by a permit for subdivision under the Restructure Overlay in accordance with a Restructure Plan.[7]

[7] Permission for the use of the land as a dwelling could still otherwise be required under the provisions of the underlying zone.

Environmental Significance Overlay

The purpose of the Environmental Significance Overlay includes to "*identify areas where the development of land may be affected by environmental constraints*" and "*ensure that development is compatible with identified environmental values*". The Environmental Significance Overlay includes a series of permit triggers (including for buildings and works, subdivision and vegetation removal) that can be varied by a schedule. There are six different schedules that apply to areas affected by the Amendment:

- Schedule 2 - Special Water Supply Catchment Areas
- Schedule 3 - Coastal Settlements
- Schedule 4 - Sewage Treatment Plant and Environs
- Schedule 5 - Areas susceptible to erosion
- Schedule 7 - Coastal Settlements
- Schedule 9 - Giant Gippsland Earthworm and Habitat Protection.

Significant Landscape Overlay

The purpose of the Significant Landscape Overlay includes to "*identify significant landscapes"* and "*conserve and enhance the character of significant landscapes"*.

Under the Significant Landscape Overlay, a permit is required for buildings and works and vegetation unless varied by a schedule. Schedule 3 – Corner Inlet Amphitheatre affects land within the Amendment. It identifies prominent landforms and includes a series of landscape character objectives.

Land Subject to Inundation Overlay

The Land Subject to Inundation Overlay seeks to identify land in flood storage or flood fringe areas that are affected by the 1 in 100 year flood or any other area identified by the floodplain management authority.

Under the Land Subject to Inundation Overlay, a planning permit is required to construct a building or to construct or carry out works (including works that are typically 'exempt' from needing a planning permit) and for subdivision. Any application must also be referred to the floodplain management authority.

Bushfire Management Overlay

The Bushfire Management Overlay seeks:

- *To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire*
- *To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented*
- *To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.*

The Overlay has two Schedules, which affect some of the land encompassed by the Amendment.

The Bushfire Management Overlay requires a planning permit for subdivision (unless varied by a schedule) as well as for buildings and works associated with specified land uses including

dwellings, except as specified. It also includes requirements to prepare a bushfire hazard site assessment, bushfire hazard landscape assessment and bushfire management statement. A series of mandatory conditions apply to permits for subdivision and buildings and works.

Road Closure Overlay

This overlay is proposed to be applied in limited areas of the Amendment to close a road by planning scheme amendment process, as distinct from other mechanisms such as road discontinuation (discussed below).

(iii) Other provisions

Clause 51.01 Specific sites and exclusions[8]

Clause 51.01 is intended "*to provide in extraordinary circumstances specific controls designed to achieve a particular land use and development outcome"*. Land identified in the schedule may be used or developed in accordance with the specific controls contained in an incorporated document corresponding to that land, in this instance, *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire, August 2017.*

The document would be incorporated under Clause 72.04.[9]

Clause 53.02 Bushfire planning

Clause 53.02 applies to an application under the Bushfire Management Overlay, unless the application meets all of the requirements specified.

A series of application requirements are associated with buildings and works for a single dwelling in nominated zones, including the Low Density Residential Zone, Township Zone or Rural Living Zone, but not the Farming Zone.

Clause 71.02-3 Integrated decision making

This clause identifies the need for decision making to take into account a range of needs and expectations of land development, including land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. It provides that planning and responsible authorities should:

> *endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.*

8 Clause 52.03 in the existing Planning Scheme but a new overlay control in Clause 51.01 under the VC148 format planning scheme.

9 Formerly Clause 81.01 although transitional provisions may apply.

2.3 Ministerial Directions and Practice Notes

Ministerial Directions

The following Ministerial Direction are relevant:

- Ministerial Direction 1 (Potentially Contaminated Land)
- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction 13 (Managing Coastal Hazards and the Coastal Impacts of Climate Change)
- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the *Planning and Environment Act* 1987.

Planning Practice Notes

The following Planning Practice Notes influenced the preparation of the Amendment:

- Planning Practice Note 13: *Incorporated and Background Documents, September 2018*
- Planning Practice Note 30: *Potentially Contaminated Land, June 2005*
- Planning Practice Note 36: *Implementing a Coastal Settlement Boundary, November 2016*
- Planning Practice Note 37: *Rural Residential Development, June 2015*
- Planning Practice Note 46: *Strategic Assessment Guidelines, August 2018*
- Planning Practice Note 53: *Managing Coastal Hazards and the Coastal Impacts of Climate Change, August 2015*
- Planning Practice Note 64: *Local Planning for Bushfire Protection, September 2015*.

2.4 Discussion

The Panel agrees with Council's assessment that at a 'big picture' level, the Amendment is generally well aligned with recently introduced provisions of the Planning Policy Framework. The two key components of the Amendment - the delineation of settlement boundaries for various townships and the application of Restructure Overlays to 'old and inappropriate subdivisions' have an important strategic planning function to protect agricultural land and environmental values whilst providing opportunities for managed growth in suitable locations.

At the same time, for reasons outlined in this Report, the Panel considers that the approach taken by Council to create new residential opportunities for some Restructure Lots in the Farming Zone is on occasion too liberal, with a risk of detracting from state policy objectives. This was alluded to by the Panel at the Hearing, with an opportunity for Council to amend the Restructure Plans within the Incorporated Document to achieve improved outcomes. This is discussed in greater detail in Chapter 7.

The Panel also considers that the Amendment generally supports key elements within the existing MSS and would make appropriate changes to improve its future application, however highlights that before adopting the Amendment, Council should update the form and content of the planning scheme in line with the relevant Ministerial Direction.

In relation to Clause 22.05 Rural Dwellings, for the most part, the Panel considers that the provisions of the Amendment, in particular, the Restructure Plans, are generally consistent

with its policy directions. However, whilst acknowledging that Clause 22.05 is an existing provision of the planning scheme, the Panel has some concerns about the consistency of elements of that policy with planning policy at Clauses 14.01-1S and 16.01-5S.

In the Panel's opinion, Clause 22.05 does not appear to be consistent with planning policy in that it provides opportunities for dwellings on lots of less than 4.1 hectares in the Farming Zone. However, the Panel acknowledges this is an existing policy with only minor or consequential changes proposed to it as part of this Amendment to address the Restructure Plans.

The Panel agrees with Council that the Amendment generally aligns with the objectives of Clause 22.06 Rural Subdivision in seeking to limit the further fragmentation of rural land and to consolidate rural lots where possible. The Panel notes that changes are also proposed to policy in Clause 22.06 via this Amendment.

However, the Panel also has some concerns about the consistency of Clause 22.06 with planning policy at clauses 14.01-1S and 16.01-5S. In summary, the Panel is of the view that further consideration should be given to both Clauses 22.05 and 22.06 as part of the transition to the new format planning scheme in due course (to address VC148 requirements) to ensure their consistency with the PPF. These concerns, and the implications of these concerns in relation to the Amendment, are discussed in the following chapter.

The Panel agrees with Council that the Amendment would implement the directions of Clause 22.07 Rural Activity Zone by seeking to minimise further fragmentation of agricultural land in that zone, thereby assisting the protection of rural character and agricultural production. In reality, a reasonably confined number of Restructure Lots are included in that zone.

Overall, the Panel finds that the Amendment has strategic support, subject to amendments being made to the Incorporated Document as well as other changes identified in the Panel Report.

2.5 Conclusion

The Panel concludes:

- In principle, the Amendment is supported by and implements the relevant sections of the Planning Policy Framework, is generally consistent with relevant Ministerial Directions and Practice Notes and has due regard to zoning and overlay provisions.
- The introduction of policies and framework plans relating to particular settlements in the Shire it is well founded and strategically justified.
- The Restructure Overlay would address deficiencies identified in land ownership patterns in the planning scheme and would seek to provide improved agricultural and environmental outcomes.
- Further consideration should be given to Clauses 22.05 and 22.06 as part of the transition to the new format planning scheme in due course (to address VC148 requirements) to ensure their consistency with the PPF. This is discussed further in Chapter 3.

2.6 Recommendations

The Panel recommends:

1. **Adopt Amendment C90 to the South Gippsland Planning Scheme as exhibited subject to the recommendations outlined in this Report.**

3 Changes to local planning policy

3.1 The issues

Are the proposed changes to local policy are appropriate? Do they suitably implement the recommendations of the Strategy?

3.2 The Panel's approach

The Panel has focused principally on issues arising from submissions to the exhibited Amendment. It also addresses proposed changes where it identifies that they may impinge on the strategic justification of the Amendment or consistency with state planning policy.

The proposed updated version of the Amendment documentation that was the subject of notification in 2019 also included 'across the board' changes initiated by Council, purporting to relate only to form and content.

The Panel is unable to confirm that these changes would be entirely neutral in effect (particularly proposed changes to mapping) given the volume and complexity of these provisions. If the changes are not entirely neutral, Council would need to reconsider the extent of any further notification that may be required for a municipal-wide change of this type.[10]

Accordingly, the Panel bases its recommendations on the policy component of the Amendment as exhibited. It considers that Council should undertake further work before the Amendment is adopted to ensure its form and content is up to date and the mapping is clear, subject to assessing the potential impact of the changes proposed. These are matters for Council as the planning authority.

3.3 Municipal Strategic Statement - issues raised in submissions

Specific issues concerning proposed policy changes to the MSS were raised by submitters in relation to Walkerville and in a more confined way for Yanakie in respect of the exhibited changes to policy.

Council agreed with one proposed change for Walkerville and another for Yanakie but did not formally remove the submissions from referral to the Panel. It also identified a number of proposed changes or corrections to exhibited local policies during the Hearing and in its response to subsequent Panel Directions.

(i) Walkerville

Various submitters requested changes to policies in proposed Clauses 21.02 (Settlement) and 21.03 (Environmental and Landscape Values). Their comments and Council's response are summarised below.

Strategies should be more direct and differentiated to state where further development and infill is encouraged or not supported. Strategy 1.2 of Clause 21.02-2 that generally promotes

[10] The timing of this may also be affected by the conversion of the planning scheme as a whole to the new format.

infill development within settlement boundaries should be more nuanced for Walkerville North given its unique features.

Council responded that these strategies were deliberately general since they were intended to apply municipal-wide, rather than to individual settlements which would be addressed in separate Framework and Structure Plans.

Further policy guidelines should be included to discourage accommodation or commercial development outside settlement boundaries and to prevent subdivision within the settlement boundary of Walkerville North coastal villages.

Council responded that the Farming Zone and the Rural Conservation Zone permit such uses to be considered outside settlement boundaries and it would not be appropriate for policy to seek to prevent this. On the issue of subdivision, it considered that existing overlays and requirements for wastewater treatment are sufficient to enable a fulsome consideration of whether subdivision was acceptable within this settlement.

Heights, materials and colours of development should be detailed in policy in Clause 21.03-2 to reduce scale and visibility of built form.

Council proposes to progress this as part of its implementation of Recommendation 1 from its Planning Scheme Review 2011-2014 by reviewing and updating relevant overlay provisions such as the Design and Development Overlay. In a policy sense, this thread would be reflected in Strategy 1.3 which seeks to "*support a hierarchy of built form within coastal settlements, with lower buildings adjacent to the foreshore and higher buildings away from the foreshore*".

Planting of native vegetation should be required, rather than encouraged in Objective 5 of Clause 21.03-2.

Council considered that it would not be appropriate to provide these directives through planning policy.

Changes should be made to the wording of Landscape and built form policy in Clause 21.17-9 pertaining to Walkerville to improve clarity.

Council agrees.

(ii) Yanakie

A submission was lodged by Margaret Atkins in relation to the policy associated with Yanakie. Specifically, Ms Atkins requested a change to exhibited Clause 21.17-13 under the heading of 'Economy' which currently references 'self contained' tourist development to be amended to refer to 'small scale' tourist development. Council agreed with this request and included revised wording at Appendix A of its Part A submission.

(iii) Transport for Victoria

Transport for Victoria lodged a submission to the Amendment seeking reference to flexible transport options into Clause 21.09 Transport Overview. This was supported by Council and included as a proposed change in the document *Amendment C90 - Appendix A, Issues Raised in Submissions and Council Response*.

(iv) Great Southern Rail Trail Committee of Management

The Great Southern Rail Trail Committee of Management also lodged a submission requesting specific reference to the Great Southern Rail Trail and the Grand Ridge Rail Trail in Clause 21.08 Tourism.

The Great Southern Rail Trail is a prominent recreation feature extending through many settlements within South Gippsland Shire. The Committee of Management also supported the reference to the rail trails and proposed connections to them in the Agnes and Hedley Framework Plans.

Council supported the Committee of Management's request and included proposed changes in *Amendment C90 - Appendix A, Issues Raised in Submissions and Council Response* in the overview at Clause 21.08-11 as well as a new objective and strategy at Clause 21.08-12.

(v) Mt Best/Toora North

Meryl Agars requested the inclusion of a plan for Mr Best/Toora North in the Amendment. She also requested changes to the planning scheme requirements enable the use and development of dwellings on former soldier settlement lots in the Farming Zone, which are typically below 40 hectares.

Council did not support any change to the Amendment as a result of this submission. It noted that a Framework Plan had been considered for Mt Best however, due to the scattered nature of development combined with the lot sizes and its rural zoning, it was considered that such a plan would not provide any useful strategic direction.

In relation to the lot size issue, Council did not support any change to Clause 22.05 to address the soldier settlement areas, and highlighted that the policy Ms Agars is seeking to change is well established in the planning scheme and is consistent with Clause 14 of the PPF in particular.

(vi) Discussion

The Panel generally supports the Council's position in relation to Walkerville. The Panel understands the reasons behind the policy change requests and acknowledges the strong desire by a number of submitters to ensure the appropriate 'protection' of Walkerville in terms of ensuring appropriate built form and retention of native vegetation.

However, the Panel agrees with Council that the majority of the changes proposed are either inappropriate in the policy part of the planning scheme or are more appropriately covered by other planning control mechanisms (such as the application of a Design and Development Overlay to guide building materials and colours).

The Panel agrees with the changes proposed by Council in relation to Clause 21.17-9 where it submitted that the clause should read "*minimising visual intrusion of development into any public use areas and the beach*" as outlined in *Amendment C90 - Appendix A, Issues Raised in Submissions and Council Response.*

The Panel supports the changes requested by Transport for Victoria and the Great Southern Rail Trail Committee of Management and considers the wording proposed by Council in response to the two submissions is appropriate. The Panel notes that whilst these word

changes were outlined in Council's Part A submission, in the updated MSS clauses provided by Council after the Panel Hearing, it appears that these changes were not included in the document. Accordingly, Council will need to ensure that these changes are included in the final version of the revised MSS.

The Panel agrees with Council in relation to the submission by Meryl Agars and does not support any changes to the Amendment in response to this submission. Mt Best is listed as a Locality at Clause 21.02-2 Settlements – Roles and Functions. Policy guidance for 'other localities', including Mt Best, is located at Clause 21.19-15, including policy directions for settlement, landscape and built form, environment and infrastructure. Therefore, the Panel accepts Council's position that a Settlement Plan is not required for the locality.

The Panel does not support any further relaxation of provisions for former soldier settlements. This would detract from the purpose of the underlying zones, especially where many of these sites are suitable for some form of agriculture or supporting use. There is also no current policy reason to provide preference to this type of 'old and inappropriate subdivision' over others, such as former coal mining settlements or railway towns.

The Panel accepts Ms Atkin's proposed change to Clause 21.17-13.

(vii) Conclusions

The Panel concludes:

- The change proposed by Council to Clause 21.17-9 to minimise visual intrusion to public use areas in Walkerville is supported.
- The change proposed by Transport for Victoria in relation to flexible transport options at Clause 21.09 Transport is appropriate.
- The inclusion of additional reference to the Great Southern Rail Trail and the Grand Ridge Rail Trail at Clause 21.08-11 Tourism is appropriate.
- Adequate policy guidance is provided in the Amendment for the Mt Best locality and the preparation of a Settlement Plan is not warranted at this point in time.
- The provision of greater flexibility at Clause 22.05 for the establishment of dwellings on former soldier settlement lots at Mt Best is not supported.
- Reference to 'small scale' tourist development in place of 'self contained' tourist development at Yanakie is supported.
- A review should be undertaken of the updated policy component of the Amendment documentation (Document 18A) ensure that changes made to both the text and mapping is indeed policy neutral.

(viii) Recommendations

The Panel recommends:

2. **At Clause 21.17-9 under the heading 'Landscape and Built Form' amend the first bullet point in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.**

3. **At Clause 21.09-1 under the heading 'Transport' amend local planning policies pertaining to 'flexible transport options' in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.**

4. **At Clause 21.08-11 and 21.08-12 amend local planning policies pertaining to the Great Southern Rail Trail and Grand Ridge Rail Trail in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.**
5. **At Clause 21.17-3 under the heading 'Yanakie' amend local planning policies to reference 'small scale' tourist development in place of 'self contained' tourist development in accordance with the document titled *Amendment C90 – Appendix A, Issues Raised in Submissions and Council Response*.**
6. **Update all exhibited Amendment documentation to comply with the Ministerial Guideline on the Form and Content of Planning Schemes.**
7. **Update the exhibited policy and format and detail of all relevant mapping within the Amendment (including Framework and Restructure Plans) to improve accuracy relative to the cadastre base and clarity in a way that is policy neutral, subject to the further recommendations in this Report about policy and mapping changes.**
8. **Consider whether further public notification and an opportunity for further public participation is required before the Amendment is progressed as a result of updates to the Amendment documentation.**

3.4 Municipal Strategic Statement - issues raised by Council

(i) Council submission

Council identified a number of further changes it considers should be made to the exhibited MSS. These changes were a result of a further review in preparation for the Panel Hearing.

Specific policies are proposed relating to land in 'old and inappropriate subdivisions' in Clause 21.02 (Settlement) which are especially pertinent to the Panel's assessment of issues raised in submissions concerning Restructure Plans. Proposed Objective 2 is:

> *To minimise the adverse environmental effects and risks, impacts on agricultural and landscape values and community servicing inefficiencies resulting from residential and rural residential development in old and inappropriate subdivisions.*

Strategies include, to:

> *Maintain a program to restructure old and inappropriate subdivisions to:*
> - *Create a more sustainable density of development.*
> - *Limit new dwellings on vacant lots.*
> - *Identify lots not suitable for accommodation development.*
> - *Identify land where further restructure investigation is required; and*
> - *Advise affected landowners on achieving restructure of their lots.*

The development of dwellings in small lots in old Crown Townships is discouraged unless zoned Township or Rural Living Zone or in accordance with Restructure Plans.

Policy relating to natural resource management at Clause 21.05 also seeks to strongly discourage rural residential land use in agricultural areas on land above 4.1 hectares. It would

also equally discourage the development of dwellings in old Crown townships where they are not in accordance with an approved Restructure Plan.

Policy guidelines proposed in Clause 21.05-1 were identified by Council at the Hearing as not aligning well with current planning scheme drafting practices. Also, Strategy 3.2 of Clause 21.07-2 seems to reference a guideline that does not have sufficient status for inclusion in the planning scheme. Similarly, Clause 21.07-3 refers to a Council Siting and Design Guide that did not form part of the exhibited Amendment documentation and Clause 21.21 (Reference Documents) including Liveable Housing Design Guidelines (2012) that have not been exhibited. Council proposes to delete these references.

As part of the policy discussion, Council provided some marked-up examples of changes (many of which were minor typographical corrections) that it considered should be made to the exhibited MSS. It appears that some of these changes were included in Document 18C.

(ii) Discussion

The Panel is of the view that further consideration should be given to the strategy at Clause 21.02 which states "*identify lots not suitable for accommodation development*". Regard should be had to the Panel's view that this should be limited to *dwelling* development when considering the form and content of the Incorporated Document in Chapter 6.

The Panel agrees that the policy guidelines outlined at Clause 21.05-1 should be reconsidered to better align with current planning scheme drafting practices. In particular, the Panel supports a further review of the exhibited MSS to remove Reference Documents (now referred to as Policy Documents) that have not been exhibited or are no longer current.

Further consideration may also be warranted regarding the effect of policies such as Clause 21.08-4 Tourism (Strategy 1.5) which appears to provide blanket encouragement for larger scale tourism infrastructure in locations close to Wilson's Promontory 'including within settlement boundaries' and potentially outside them. These issues need to be addressed carefully and in a balanced way, given the inherent environmental sensitivities of that region.

As discussed in the previous section, the Panel also supports a general review of the exhibited Amendment documentation to ensure Form and Content requirements are met, as well as ensuring that minor corrections identified by the Council in its review of the documentation before and during the Panel Hearing are addressed.

(iii) Conclusion

The Panel concludes that:

- Further review of the MSS as identified by Council in its presentation to the Panel Hearing is appropriate prior to adoption of the Amendment, including in relation to:
  - the strategy at Clause 21.02 which refers to 'accommodation' as compared to 'dwellings' and ensuring consistency of terminology with the Incorporated Document
  - the use of Reference Documents and policy guidelines, particularly where they have not been through any public exhibition process
  - other minor corrections identified by Council at the Panel Hearing and/or subsequently as part of the revised documentation (Documents 18A and 18C).

3.4.2 Recommendation

The Panel recommends:

9. Remove reference to policy documents and guidelines that have not been the subject of public exhibition or are no longer current.

3.5 Updates to local planning policies at Clause 22

(i) The issue

The Amendment as exhibited proposes to update various local planning policies to make reference to policy outcomes sought in respect of land within the Restructure Overlay. The Panel generally regards the scope of the changes proposed as 'consequential changes' resulting from the introduction of the Restructure Overlay, rather than initiating more substantive changes to these underlying provisions.

Notwithstanding, the Panel remains somewhat uncomfortable about the resultant updated provisions, since it has more fundamental concerns about their lack of consistency with state and other local planning policies in some respects. This is particularly apparent in their approach to permitting dwellings on small lots in farming zones.

In this context, the Panel makes observations leading to a further recommendation for Council to undertake a comprehensive review of these local policies moving forward, albeit beyond the direct scope of this Amendment.

(ii) Council Submission

Rural Dwellings Policy (Clause 22.05)

At present, it is policy that a permit must not be granted to use land for a dwelling under the Farming Zone if the land is within a historic Crown township or settlement.

Council advised that it does not propose to revisit the RLU Strategy as part of this Amendment. Rather, it proposes to make minimal changes to bring these policies in line with the provisions of the Restructure Overlay.[11]

Importantly, it would remove the current policy directive not to issue a permit for a dwelling within a historic Crown township or settlement, since the (more direct) Restructure Overlay will be introduced as a key part of the Amendment.

Instead, it would confirm that the grant of a permit for a dwelling in the Farming Zone is strongly discouraged unless the lot conforms with a Restructure Plan in the Schedule to Clause 45.05 where applicable.

The exhibited version of the Amendment also proposes to include the 2017 Restructure Plans as a policy reference, to retain the *South Gippsland Rural Land Use Strategy 2011* as a Policy Reference and to delete reference to the 2013 *Housing and Settlement Strategy* from this and the following policy.

[11] The Panel has not discerned any further changes proposed in the package of policies that was re-notified in March-April 2019.

Rural Subdivision Policy (Clause 22.06)

Current objectives include:

- *To limit the further fragmentation of rural land by subdivision.*
- *To ensure that lots resulting from subdivision are of a sufficient size to be of benefit to agricultural production*
- *To encourage the consolidation of rural lots ...*
- *To provide a consistent basis for considering planning permit applications for the subdivision of rural land.*

Relatively minor changes are proposed to this policy, such as ensuring certain requirements are conjunctive and changing terminology to refer to 'old and inappropriate subdivisions'.

Rural Activity Zone Policy (Clause 22.07)

This policy applies to land in the Rural Activity Zone. The Amendment proposes to clarify that dwellings on land with an area of 4.1 hectares or less are encouraged in connection with a tourism venture provided they are not located on land in a Restructure Area.

The current policy provides guidelines to consider applications for dwellings on land greater than 4.1 hectares.

3.5.2 Panel discussion

In general, the Panel strongly supports the policy basis of each of these policies, and consider that they remain valid in the current physical and policy setting.

The modifications to Clauses 22.05, 22.06 and 22.07 as part of this Amendment are relatively non-controversial, in so far as they are directed to making minimal changes to align these policies with what is sought for properties in the Restructure Overlay.

For reasons discussed throughout this Report there may be good reasons why, on balance, Council should support the use of land for a dwelling on selected smaller lots within the Restructure Overlay even where they are in the Farming Zone and caution would otherwise be warranted. The appropriateness of such land use is considered by the Panel in Chapter 7 in respect of each Restructure Lot.

Therefore, it is appropriate for the Amendment to seek to reverse the previous policy limitation to now enable applications for the use and development of dwellings on selected, consolidated Restructure Lots in 'old and inappropriate subdivisions'.

That is, the addition in dot point 1 of Clause 22.05 under the heading "*Development of dwellings on lots in association with or without Agriculture*" is supported by the Panel. This partners with the introduction of the Restructure Overlay which applies to this land as a more direct form of control.

Suggested refinements

The Panel considers that there is no need for the policy at Clause 22.05 to include the content "*Development of lots in old and inappropriate subdivisions*". This would seek to prevent or discourage a permit being granted to use or develop a dwelling in the Farming Zone where the Restructure Overlay applies unless the land is consolidated in accordance with the Restructure Plan.

This is a direct outcome of the application of the Restructure Overlay itself - not a matter for policy. It would naturally follow that policies in the planning scheme should not encourage an outcome precluded by a specific control. A confirming statement to this effect is not required.

For completeness, the Panel also suggests that it would be more appropriate to refer to land within the Restructure Overlay rather than using the more controversial terminology 'old and inappropriate subdivisions' to remove any doubt. This would also reflect submitters' concerns that this term has a negative connotation, implying that their landholding is not validated by Council.

The provisions propose to confirm that an application for a dwelling within the Restructure Overlay must meet the further application requirements of the Incorporated Document. This is probably also unnecessary given the operation of the provisions of the Restructure Overlay and confirmation in the Incorporated Document that its provisions prevail if any inconsistency arises.

Residual concerns with aspects of the existing policy

A challenge for the Panel is that it has concerns about some of the detailed content and format of these existing policies, yet it is principally directed to consider the changes proposed as part of the Amendment as raised in submissions referred to it. These submissions do not specifically highlight the broader potential for a disconnect between these policies and high level state planning policies pertaining to agriculture, housing and the like. This remains an underlying concern for the Panel.

The Panel was advised that the current local policies were introduced into the planning scheme by Ministerial Amendment without public notification or an independent Panel process.

Fundamentally, the Panel supports the policy discouragement for dwellings on land in the Farming Zone with an area between 4.1 hectares and 40 hectares unless they are necessary to support agriculture. However, it is genuinely concerned about the effect of policy support for dwellings on land less than 4.1 hectares for rural-residential purposes.

Council confirmed that it generally applies these policies to support the development and use of dwellings on lots less than 4.1 hectares, but that it is normally strongly opposed to dwellings on land between 4.1 hectares and 40 hectares (except where justified as necessary for the agricultural use of the land).

This element of the policy does not appear to be consistent with state policy, the otherwise consistent line of local planning policies seeking to protect agricultural land, or the purpose of the Farming Zone. Likewise, it is not consistent with housing strategies that seek to direct rural residential living to land zoned accordingly.

The Panel is aware of a long line of decisions of the Victorian Civil and Administrative Tribunal (VCAT) that have not supported the grant of a permit for the use and development of dwellings on small lots (less than 4.1 hectares) since they were regarded as inconsistent with state policy and rural zone controls. At the Panel's request, Council provided a link to a sample of recent decisions concerning Clauses 22.05, 22.06 and 22.07 that confirmed this principle.[12]

[12] Including *Sincock Planning v Greater Geelong CC* [2010] VCAT 1066.

For example, in the case of *R & D Collins & Ors v South Gippsland SC & Ors,*[13] VCAT held:

> *I have a fundamental concern about the premise upon which the Council's and Applicant's positions are based. It is assumed that a dwelling on a 1.4 hectare lot (road reserve) is automatically acceptable or "an entitlement" as described by Mr Strachan. That position must be questioned when one considers the policies and decision guidelines set out in the Council's Scheme …*
>
> *The net outcome of the proposal would be to remove high quality land of 0.8 hectares from agricultural production with the purpose of creating a rural residential lot. That appears to be contrary to the Scheme's directions. High quality agricultural land is a scarce resource. Its progressive erosion, even by small increments, together with the creation of small rural living enclaves adjacent to viable and highly productive farms, sets up the potential for conflict. It also introduces a non-agricultural land use that would limit the potential for agricultural land to be returned to productive use at some time into the future.*

The Panel recognises that when a permit is applied for a dwelling on a small lot, the zone controls and the full suite of policies will be relevant. However, providing an express 'carve out' in policy by supporting rural-residential use of small farming lots generates capacity for direct inconsistency and "death by a thousand cuts".

Without sufficient justification, allowing dwellings on small lots has the potential to generate the negative impacts sought to be avoided by the policy purpose itself - such as fragmentation of rural land; reduction in the extent of contiguous land for productive agriculture; closer and more sensitive receptors for amenity impacts; a change in rural character and the potential for environmental impacts (in connection with permanent habitation and generation of effluent and wastewater).

Another serious concern is that dwellings in the Farming Zone are discouraged on certain land, but land with remnant native vegetation is nominated as having greater scope for such use and development in Clause 22.05.

While the existence of remnant native vegetation may pose challenges for farming activities, in the Panel's view, it is not necessarily consistent with the suite of state and local planning policies to create a distinct option for such land to be used for a dwelling. In fact, Council's approach to the Amendment has been more stringent, to identify lots with high native vegetation cover (generally Crown Land allotments) as 'no dwelling development' lots.

The Panel's general support for the discrete changes proposed as part of this Amendment to refer to Restructure Overlay land should not be taken as its tacit approval of the remaining content of these policies.

Recommendations for further work

There are also a number of drafting issues that arise within the current policies that would be perpetuated by the Amendment. These include the use of mandatory language and the

[13] [2005] VCAT 2045, [15], [18]. The Panel acknowledges that this case was dealing with a boundary realignment and that Planning Scheme policies have changed since that date, but the principle endures.

direction to include a permit condition requiring a section 173 agreement preventing further subdivision. There is also potentially unnecessary repetition such as duplication from the decision guidelines of the Rural Activity Zone.

This is generally not an appropriate role for planning policy, confirmed by *Planning Practice Note 8: Writing a Local Policy*. To be effective, the Panel believes these matters would need to be included as a requirement of an applicable zone or overlay.

A policy 'rethink', most likely combined with a number of other VPP tools, would be required to address these deficiencies. At minimum, the Panel considers that a comprehensive review of these policies is warranted to ensure compliance with state planning policy and zone provisions.

However, this work is outside the scope of the Amendment and is therefore recommended for further work. Clearly, it will also have capacity to impact a broader range of stakeholders and may require Council to rethink some of its views about the capacity for residential land use within rural areas.

3.5.3 Conclusions

The Panel concludes:

- The discrete changes to local policy to address land in the Restructure Overlay are generally supported subject to changes recommended by the Panel below.
- The Policies should be further refined including to delete reference to "*Development of lots in Old and Inappropriate Subdivisions*" and its accompanying policies at Clause 22.05 and to also delete reference to the need for applications to meet the application requirements of the Incorporated Document should be deleted. Reference to these policies and application requirements are unnecessary as these matters are more directly addressed by the Restructure Overlay.
- Reference to 'Old and Inappropriate Subdivisions' at exhibited Clauses 22.05, 22.06 and 22.07 should be replaced with reference to 'land within the Restructure Overlay', as appropriate.
- The Panel retains concerns about the lack of consistency of elements of existing local planning policies with zone provisions and other state and local policies. Aspects of these policies also appear to extend beyond the proper ambit of policy provisions under the Victoria Planning Provisions.

(i) Recommendations

The Panel makes the following recommendations:

10. **At exhibited Clause 22.05, delete the heading "*Development of lots in Old and Inappropriate Subdivisions*" and its associated policies.**

11. **At exhibited Clause 22.05, under the heading "*Application requirements*", delete the last paragraph which requires applications for a dwelling where the Restructure Overlay applies to meet the application requirements of the Incorporated Document.**

12. **Replace the use of the words 'Old and Inappropriate Subdivisions' at exhibited Clauses 22.05, 22.06 and 22.07 with the words "*land within the Restructure Overlay*" as appropriate.**

Further recommendation:

13. **Council consider undertaking a fulsome review of Clauses 22.05 and 22.06 of the South Gippsland Planning Scheme pertaining to Rural dwellings and Rural subdivision to ensure their consistency with the Planning Policy Framework and established principles (including Planning Practice Notes) relating to the form and scope of a local planning policy.**

3.6 Council post Panel Hearing changes

As discussed at Chapter 1.3, further changes were proposed by Council to the Amendment following the Hearing, including some changes to the Planning Policy Framework.

The revised Amendment documents were the subject of targeted notification at the direction of the Panel and 15 additional submissions were received.

However, some changes were specifically made to mapping in the MSS in response to either errors identified during the Panel process or in response to submissions made where the Council agreed at to particular changes at the Hearing.

These specific changes made to the MSS, as opposed to the intended 'policy neutral' changes, primarily related to various Framework Plans included at Clauses 21.12 to 21.19 and included minor changes to the Framework Plans for: Leongatha, Fish Creek, Venus Bay Estate 1, Walkerville South , Buffalo, Ruby, Kardella and Strzelecki.

These post-Panel Hearing changes that were made to each of these Framework Plans have been discussed at Chapter 4 below in the specific discussion about each of the settlements.

4 Settlement Framework Plans and settlement boundaries

Numerous submissions were made about the Framework Plans proposed as part of the Amendment, particularly associated settlement boundaries. Some submitters also made a number of specific rezoning requests.

4.1 Introduction to key issues and Panel's approach

The strategic directions identified in the Strategy which guided the preparation of the Framework Plans have influenced the Panel evaluating submissions associated with these plans, as well as where rezonings are concerned. These are outlined in Chapter 2.1(v).

In addition to these strategic directions, the Panel has focused on the specific locational characteristics of individual properties raised in submissions, including:

- existing land use
- adjoining land use (current or potential) and the potential for any change to affect the adjoining land use
- environmental constraints, especially where the land is affected by environmental overlays
- the likely number of lots or dwellings that could result from a settlement boundary change or rezoning
- proximity to community services and facilities.

The Panel notes Council's preference (as explained in response to the Panel's Directions) for all rezoning proposals - other than those formally exhibited as part of the Amendment - to be referred for consideration as part of Council's next general planning scheme Amendment.

The Panel generally supports this approach which would enable a more holistic view of zone controls to be considered. It has therefore only provided detailed recommendations in respect of rezoning proposals exhibited as part of the Amendment.

4.2 Fish Creek

(i) Background

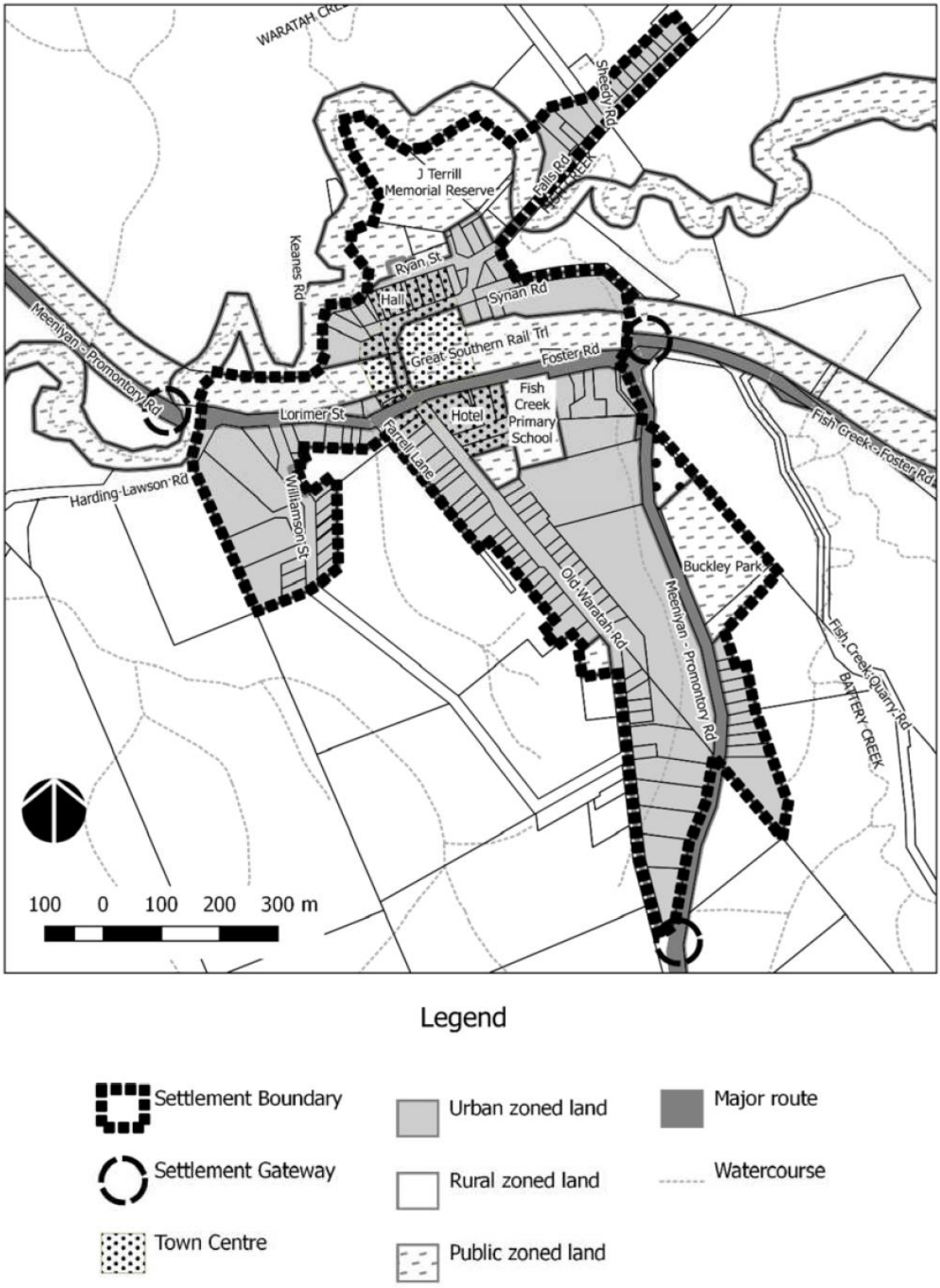
Fish Creek is identified in the Strategy and exhibited in Clause 21.15-1 as a Small Town. The Strategy identifies a series of development constraints including:

- no reticulated gas or sewerage
- waste disposal issues in some parts due to soil capacity
- erosion prone land
- Fish Creek running through the town which is prone to flooding.

The Strategy observes that there is limited pressure for growth in the township and identifies that infill development and local facilities and services should be encouraged commensurate with the Fish Creek catchment.

The Framework Plan proposed in Clause 21.15-2 as exhibited is included in Figure 2.

Figure 2 Fish Creek Framework Plan



(ii) **The issues**

Key issues to be addressed in Fish Creek are whether:

- the settlement boundary as exhibited is appropriate or should be expanded in response to various submissions seeking change

- the extent of land designated as part of the Town Centre on the Framework Plan should be increased
- land to the east of Fish Creek should be designated for rural living purposes.

(iii) Submissions

Ten submissions were lodged in relation to the Fish Creek Framework Plan. Of these, one expressed support and the remaining submission sought changes.

David and Dorothy Christie who own land north east of Fish Creek sought to have their property included within the settlement boundary and to have their land rezoned from Farming Zone to Township Zone. Their property is approximately 2,350 square metres in area, is already developed and used for low density residential purposes and directly abuts urban lots in the Township Zone.

Council advised of its support for these changes. It regarded the proposed change to the settlement boundary as minor and not expected to have an adverse effect on nearby properties since there would be no change in land use. This was shown on the revised documentation as part of the targeted notification undertaken in 2019 following the Hearing.

Council also supported the rezoning of this land to the Township Zone as part of a future general amendment.

Susan Quinn and Tony Walker, also to the north east of Fish Creek, sought to have the settlement boundary extended to include their property located immediately abutting the eastern boundary of the town, and to rezone it to the Township Zone.

Council advised that the property is adjacent to Fish Creek and is divided by a tributary of this waterway. The Land Subject to Inundation Overlay affects approximately 50 per cent of the site, with the entire property also covered by Environmental Significance Overlay Schedule 5 (Areas Susceptible to Erosion). This land is developed and used for low density or rural residential purposes.

Council did not support the proposed boundary change or rezoning for that land on the basis that Fish Creek is not designated for growth and has notable environmental constraints. Council also advised that if the land was rezoned to the Township Zone, it would be expected to be capable of accommodating at least two further dwellings.

Arthur Dorling and Karen and Andrew Dorling own land on the south west side of the town (either side of Williamson Street). They sought inclusion of their respective properties in the settlement boundary however, did not seek to have the land parcels rezoned. The submission acknowledged that it was unlikely that any proposal to rezone and develop the land would be applied for in the near future however, if reticulated sewerage was provided, this could facilitate redevelopment of the land if it was pre-emptively included within the settlement boundary.

These land parcels have a combined area of approximately 13.25 hectares. Council submitted it would be premature to include this land in the settlement boundary in the absence of reticulated sewerage (or any commitment from South Gippsland Water for it to be provided) and given the existing supply of vacant Township Zoned land.

A submission was also made on behalf of the Fish Creek Catholic Church that its land on the south east side of town should be included in the settlement boundary and rezoned from a rural to an urban zone.

Council did not support this request, highlighting that the property is currently used for agricultural purposes, is located across a main road and rezoning would result in a loss of agricultural land as well as extending the urban area of the town, rather than 'infilling' vacant land between existing urban areas of the town.

A submission was made by Frank Smolders and Michaela Lein in respect of their land at the eastern end of the town centre. The submission requested inclusion of the property in the town centre since it effectively forms part of the Fish Creek commercial centre.

Council supported this change in designation and, further submitted that a number of additional properties should also be designated as part of the Town Centre including 2 - 37 Falls Road.

A submission was made by Kelly Pruyn, seeking rezoning of land from Public Park and Recreation Zone to Township Zone. The property is used for retail purposes (a nursery) and is surrounded on three sides by land owned by the Department of Environment, Land, Water and Planning (DELWP) which forms part of the Great Southern Rail Trail.

Council supported this rezoning request in principle on the basis that it appears to be an anomaly and would not have any material effect on the amenity of nearby properties. However, it advised that this should be considered in a future planning scheme amendment.

Karena and Paul Kerr's land is located north east of the existing township, straddling Fish Creek and comprises two land parcels - one 27 hectares parcel with frontage to Falls Road, and a second parcel of 41 hectares to the south of Fish Creek. The larger of the two land parcels is leased separately for farming purposes. Both properties have a significant slope near the creek.

The submitters sought inclusion of almost half of the smaller property as a site for 'Further Investigation' for rural living or low density residential development within the Framework Plan. They submitted that the land could then be subdivided into approximately seven to ten lots, accessed via a central roadway. The Kerrs advised the Panel that:

- they had concerns about the analysis undertaken in the development of the Strategy and the RLU Strategy, particularly the way 'Further Investigation Areas' for rural living were identified
- Council had not adequately considered Meeniyan and Fish Creek in the consideration of rural living land and did not appear to conduct a supply and demand investigation
- their land is suitably located for development for rural living purposes given its location proximate to a town with services and community facilities
- the proposed increase in lots would not constitute 'higher density development' as suggested by Council officers
- the two properties had not been farmed as a unit for over 15 years
- there is an existing internal road crossing of the waterway that a number of authorities are keen to see removed and the proposal would facilitate this.

Council did not support the Kerr's request. In its view, there was inadequate justification to rezone the land to provide for rural living since an evidentiary case had not been made in line with *Planning Practice Note 37: Rural Residential Development*. In addition, Council submitted that:

- the property does not directly abut existing urban or Rural Living zoned land
- the proposal would remove 27 hectares from agricultural use
- the site is inappropriate for further subdivision and development given slope, erosion risk and its proximity to declared waterways
- Fish Creek is not an identified growth area
- any rezoning as requested would need to be dealt with via a separate planning process
- there are other areas available for rural living in a number of settlements throughout the Shire, including Foster and Korumburra. No supply and demand study was undertaken for this site or more broadly because the demand for rural living land in the Shire is in theory "insatiable".

A written submission was lodged by Roger and Marie Naylor, requesting inclusion of their property in the settlement boundary and foreshadowing a future request for rezoning and subdivision. The submitters noted that their property is approximately 1.6 hectares and is too small for farming purposes.

Council regarded this request as premature since, as noted for other expansion proposals, the town is not sewered or designated to be in the foreseeable future.

(iv) Discussion

The Panel considers that the inclusion of David and Dorothy Christie's land in the settlement boundary is appropriate having regard to the principles outlined above. It agrees with Council that given the area of the lot, combined with the current use and development of the land for low density purposes, there will be limited opportunity to develop any additional dwellings on the land and that the change in settlement boundary will have little impact on adjoining agricultural land use.

In relation to the Walker land, however, the Panel does not support a change to the settlement boundary. The Panel agrees with Council that such a proposal is not appropriate given the environmental constraints of the property and the potential for the property to accommodate at least two additional dwellings (or potentially more) if the boundary was extended and the land rezoned to Township Zone.

The Panel also agrees with Council in relation to the properties owned by the Dorlings. It is not appropriate to include this land within the settlement boundary at this point in time keeping in mind the current strategic intent of limiting growth in Fish Creek and the significant number of additional dwellings that could result if these land parcels were included within the settlement boundary and ultimately rezoned.

The Panel agrees with Council that the inclusion of the Fish Creek Catholic Church land within the settlement boundary would be inappropriate given its location on the eastern side of Meeniyan-Promontory Road, its current use for grazing and its abuttal to land used for agricultural purposes.

The Panel supports the inclusion of land owned by Frank Smolders and Michaela Lein within the designated Town Centre on the Framework Plan. Their land clearly forms part of the small commercial strip in the centre of town and it is appropriate that it should be designated as such. The Panel also supports Council's proposal to include all properties from 2-37 Falls Road within the designated Town Centre (identified post-exhibition of the Amendment) is appropriate. The Panel notes that this proposal was the subject of further notification after the Panel Hearing and that no opposing submissions were made to this extended designation.

The Panel agrees that potential rezoning to reflect changes to the settlement boundary supported by it can be addressed in a subsequent process. A similar opportunity would be available for rezoning Kelly Pruyn's land, provided it also addresses potential contamination issues in accordance with *Ministerial Direction 1 – Potentially Contaminated Land* given its former use.

In relation to the submission by Karena and Paul Kerr, the Panel agrees with Council that the proposed nomination of part of the land for 'Future Investigation' for rural living or lower density residential development is not appropriate for a number of reasons. These include the land's topography and associated environmental constraints, its lack of direct abuttal to township zoned land, the resultant loss of agricultural land and the potential for impacts on abutting agricultural land use. This is reinforced by the fact that Fish Creek is not designated to accommodate this level of growth.

Likewise, the Panel does not support the expansion of the settlement boundary to include Roger and Marie Naylor's property.

The Panel acknowledges the submitters' comments about how 'Future Investigation' areas were selected and dealt with in the Strategy and the RLU Strategy, as well as their observations about the desire of local farmers to 'downsize' to proximate local areas.

Part C of the Strategy identifies five areas considered for inclusion as 'Rural Living Investigation Areas'. Fish Creek was one of a number of areas that were considered but did not meet the criteria for inclusion.

The Panel was not provided with detailed evidence or documentation about how the Amendment has dealt with 'Future Investigation' areas and is therefore not in a position to make broad findings for all relevant properties. That said, the Panel considers that the principles on which the Strategy is based in relation to 'rural lifestyle' lots are generally sound in a strategic sense, such as referring to the need for such development to be located in close proximity to higher order settlements where sewerage and services can be provided. They have also given due regard to the provisions of *Planning Practice Note 37 – Rural Residential Development.*

Accordingly, the Panel accepts the in-principle findings of the Strategy that only limited parts of Southern Leongatha, Nyora and Kongwak are considered to be potentially appropriate for rural living purposes, subject to more detailed studies.

In general, if Fish Creek was provided with reticulated sewerage in the future, consideration could then be given as to whether further expansion of the settlement of this township is strategically justified. These issues would need to be addressed across the township as a whole.

(v) Conclusions

The Panel concludes:

- The inclusion of 2 Sheedy Road within the Fish Creek settlement boundary is appropriate
- The designation of land at 2-37 Falls Road as part of the Town Centre on the Framework Plan is supported
- Rezoning could be considered by Council in future to give effect to its intentions for nominated properties within Fish Creek
- No other proposals for expansion of the township boundaries in Fish Creek are supported in light of the principles established by the Strategy and other strategic and environmental considerations
- Designation of land to the east of Fish Creek for rural living purposes is not supported at this point in time. This could be reconsidered if the township was provided with reticulated sewerage in future.

(vi) Recommendations

14. Extend the Fish Creek settlement boundary to include the land at 2 Sheedy Road, Fish Creek, as shown on the amended Framework Plan (Document 18A).

15. Extend the Town Centre designation on the Fish Creek Framework Plan to include the land at 2-37 Falls Road, Fish Creek, as shown on the amended Framework Plan (Document 18A).

4.3 Jumbunna

(i) Background

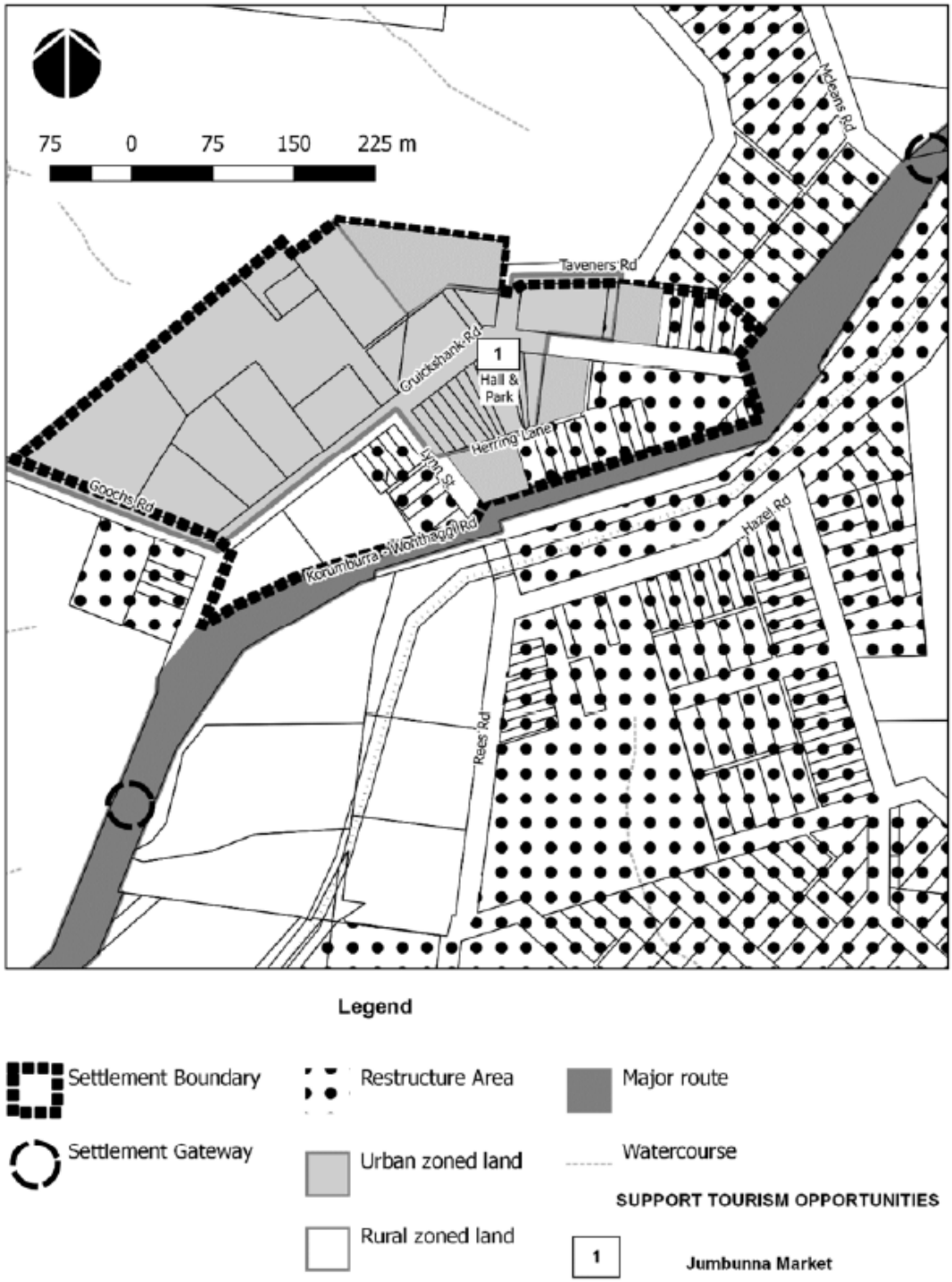
Jumbunna is identified in the Strategy and exhibited within Clause 21.18-7 as a hamlet. The Strategy identifies development constraints for Jumbunna as an absence of reticulated water, sewerage and gas.

The Strategy identifies that opportunities should be explored to optimise the use of existing facilities and to enhance connections to larger centres for higher level services.

The Framework Plan proposed in Clause 21.18-8 as exhibited is included in Figure 3.

A number of properties within the Jumbunna settlement boundary are proposed to be rezoned from the Farming Zone to Township Zone as part of the Amendment, with consequential removal of Environmental Significance Overlay Schedule 5 (Areas susceptible to Erosion).

Figure 3 Jumbunna Framework Plan



(ii) **The issue**

Should four parcels within the settlement boundary be rezoned from the Farming Zone to the Township Zone?

(iii) Submissions

One opposing submission was made by Robyn Hill in relation to the Jumbunna Framework Plan (with submissions made in relation to the Restructure Plan addressed separately in Chapter 7). She objected to the proposed rezoning of her land on the basis that she keeps animals and the rezoning may restrict her ability to continue to do so, with a Local Laws permit being a limitation. She also expressed concern about adjacent lots being rezoned with potential to contain multiple dwellings in the future.

Council explained that Ms Hill's property is used and developed for residential purposes, is within the Jumbunna Framework Plan settlement boundary and immediately abuts land in the Township Zone. It also confirmed that it would still be possible for a land owner to keep a reasonable number of animals in the Township Zone.

It advised that concerns about the potential for additional dwellings on adjacent land to the side and rear were not founded since the land is identified for inclusion in the Restructure Overlay which would restrict its potential development for dwellings.

(iv) Discussion

The Panel agrees that it is appropriate to include Ms Hill's property within the Township Zone as exhibited given its current lot size, use and development for a dwelling, location in the 'centre' of the township and its abuttal to existing township zoned land.

While there may be some changes to the ability of landowners to keep animals in the Township Zone compared with the Farming Zone as raised by Ms Hill, the Panel accepts Council's position that there is still an opportunity to keep several animals within this confined lot of 0.23 hectares and that the need to obtain a Local Laws permit is not unduly restrictive.

The Panel also offers general support to the proposed rezoning of other selected lots within this settlement from Farming Zone to Township Zone since they involve small properties already developed with a cluster of dwellings within the settlement boundary. The Panel regards this approach as generally consistent with the Strategy.

(v) Conclusions

The Panel concludes:

- The proposed rezoning of Ms Hill's property to the Township Zone is appropriate.
- It supports the proposed rezoning of other land in Jumbunna as exhibited.

4.4 Kongwak

(i) Background

Kongwak is identified in the Strategy and exhibited Clause 21.18-9 as a hamlet. The Strategy identifies development constraints for Kongwak including:

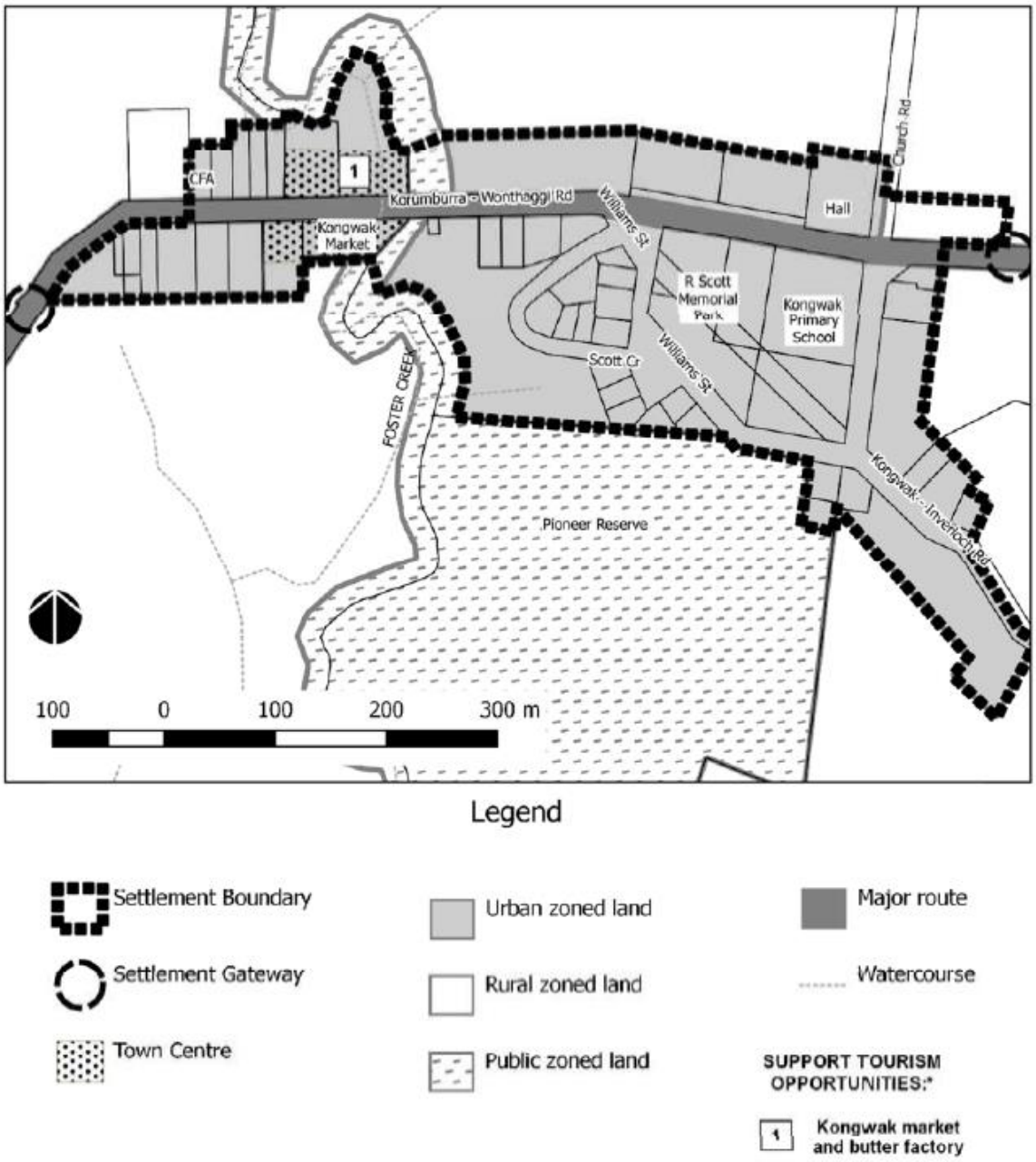
- no reticulated water, sewer or gas
- a high proportion of the town centre and surrounding land is identified as being of Aboriginal cultural heritage sensitivity
- the Bushfire Management Overlay applies to land south of the township

- the proposed Land Subject to Inundation Overlay affects a small portion of the settlement.

The Strategy identifies that growth should be contained within the settlement boundary, that opportunities should be explored to optimise the use of existing facilities and that connections to Wonthaggi and Korumburra should be enhanced for higher level services.

The Framework Plan proposed in Clause 21.18-10 as exhibited is included in Figure 4.

Figure 4 Kongwak Framework Plan



(ii) **The issues**

Key issues related to mapping concerns and the application of public zones.

(iii) Submissions

Two written submissions were lodged in relation to Kongwak Framework Plan. Submissions queried the way road reserves are annotated on the Framework Plans and the anomalous application of public zones to Foster Creek when the land is in private ownership.

The first submission raised a number of issues however, only one is of relevance to the Kongwak Framework Plan. Specifically, Ann Waycott requested the Framework Plan be amended to not show the unopened section of Scott Crescent as a 'road'.

In its Part A submission, Council advised that it did not agree to this change since road reserves are typically shown on all the mapping, regardless of whether they are open or unopen reserves.

The second submitter, Lee Storti raised an issue about the zoning of Foster Creek within the Public Conservation and Resource Zone when it is actually in private ownership.

Council advised that this is a zoning anomaly and that there were numerous properties in similar circumstances. It proposes for this issue to be dealt with as part of Amendment C116 associated with changes to the Land Subject to Inundation Overlay.

(iv) Discussion

The Panel agrees with Council and does not support a change in the mapping in relation to the Waycott property in Scott Road, especially since a consistent approach to roadways has been taken to all the mapping throughout the Shire.

The Panel also considers that the anomalous application of the Public Conservation and Recreation Zone would be most suitably addressed as part of the separate planning scheme amendment.

(v) Conclusions

The Panel concludes:

- The Kongwak Framework Plan should not be amended to remove reference to the unopened Scott Crescent.
- The anomalous application of the Public Conservation and Recreation Zone to land in Kongwak could be dealt with as part of a separate amendment process.

4.5 Mirboo

(i) Background

Mirboo is identified in the Strategy and exhibited Clause 21.18-12 as a hamlet. The Strategy identifies development constraints for Mirboo including:

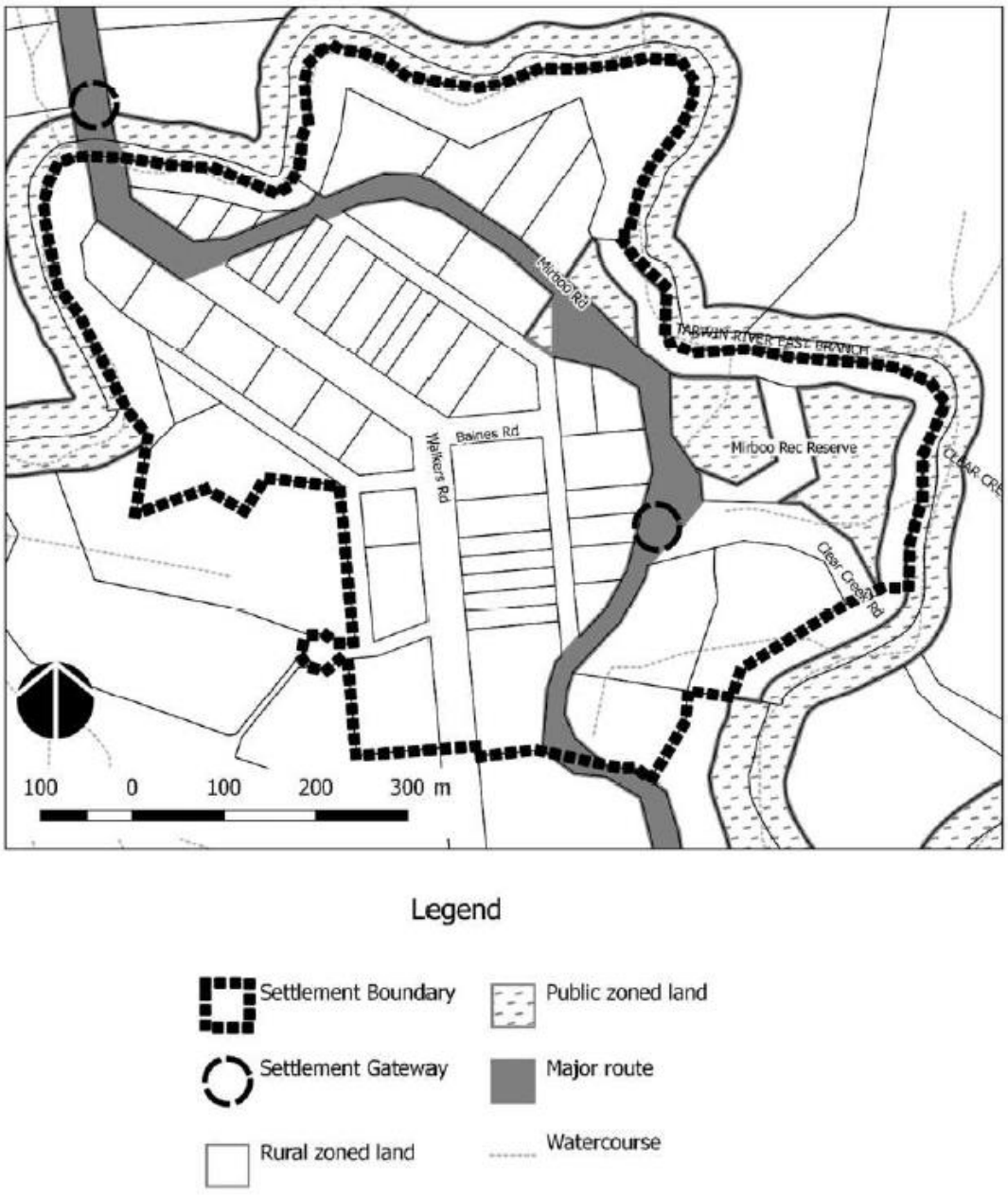
- no reticulated water, sewer or gas
- Aboriginal cultural heritage sensitivity
- location in the Tarwin Catchment area and Environmental Significance Overlay Schedule 2 (Water Catchments) applies to the whole settlement
- South Gippsland Water has concerns about growth of the town and impacts on the catchment from an increase in septic tanks

- bushfire prone land.

The Strategy identifies that growth should be contained within the settlement boundary, that opportunities should be explored to optimise existing facilities and that connections to Leongatha for higher level services should be enhanced.

The Framework Plan proposed in Clause 21.18-12 as exhibited is included in Figure 5.

Figure 5 Mirboo Framework Plan



(ii) **The issue**

The key issue is whether the settlement boundary should be expanded to the west to include additional lots.

(iii) Submissions

One submission was lodged by Rodney and Coral Donat objecting to the Framework Plan as they have two lots of approximately 4 hectares and 2 hectares and want to be able to build a dwelling on both.

In its Part A submission, Council initially recommended no change to the Framework Plan to address this submission on the basis that no change is proposed to the planning controls affecting their land as a result of this Amendment. Council noted that Mirboo is a 'no-expansion' settlement, has very few services, is wholly located in the Farming Zone (even land within the proposed settlement boundary), is within the Tarwin Declared Water Catchment area and does not have reticulated sewerage.

However, at the Panel Hearing, Council submitted that given the relatively recent approval of the Donat's land and the size of the lots in question, it might be appropriate to amend the settlement boundary to include them.

(iv) Discussion

Even appreciating the recency of the subdivision, the Panel does not support the expansion of the settlement boundary for Mirboo to include the additional lots as requested by the submitters. There are notable environmental constraints affecting the town and it has limited accessible services that weigh against this proposed expansion.

In practice, the Panel agrees with Council that the proposed Framework Plan would not change the zoning or overlay controls affecting their land. They could still potentially apply for a planning permit for a dwelling on these lots in accordance with the requirements of the Farming Zone, applicable overlays and relevant policies. The appropriateness of this land use would need to be demonstrated on its merits at that time.

(v) Conclusion

The Panel concludes:

- The settlement boundary on the Mirboo Framework Plan should not be expanded to the west.

4.6 Strzelecki

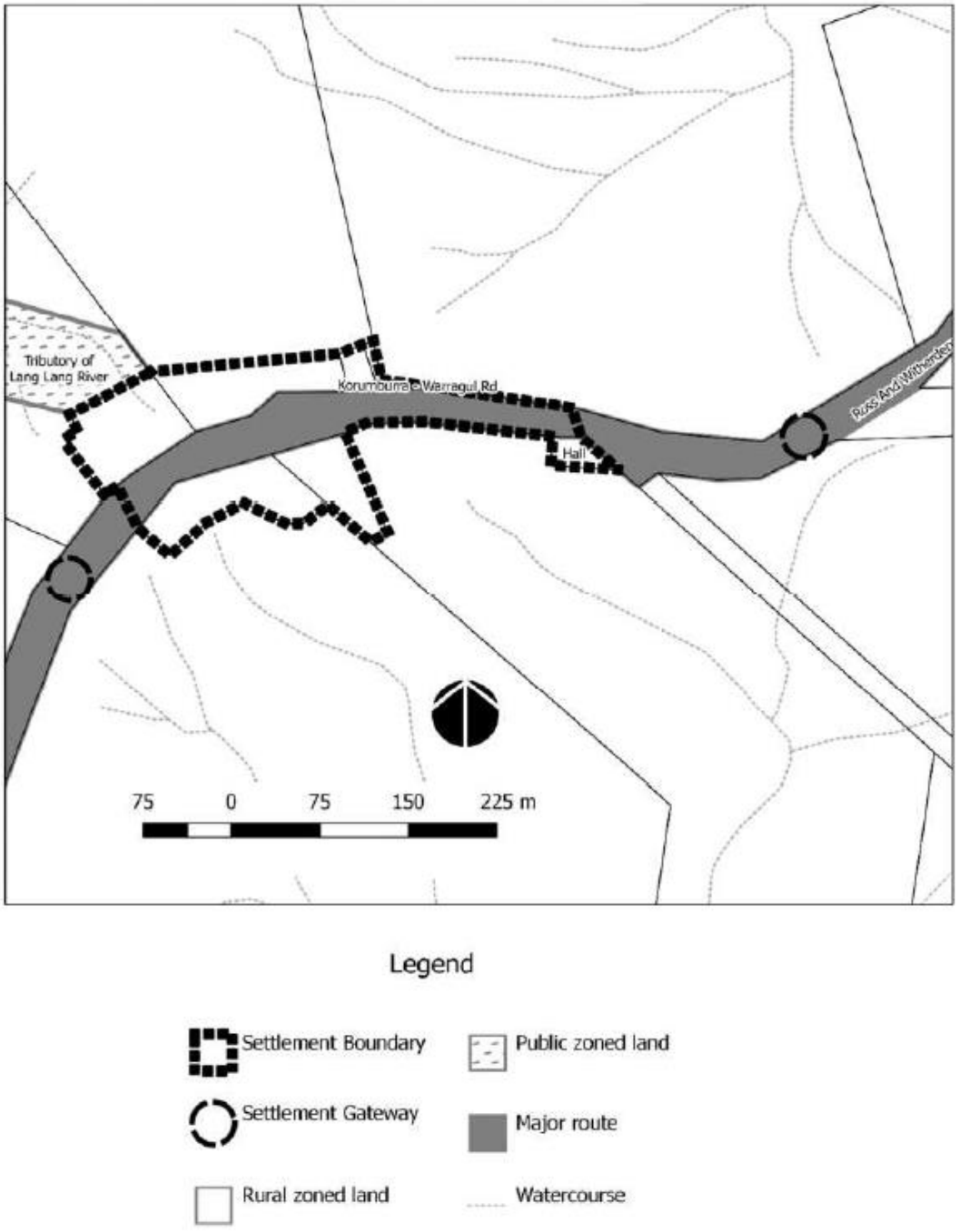
(i) Background

Strzelecki is identified in the Strategy and exhibited Clause 21.19-13 as a Locality. The Strategy identifies development constraints including:

- no reticulated water, sewer or gas
- location of some of the locality in the Tarwin Catchment area and Environmental Significance Overlay Schedule 5 (Areas Susceptible to Erosion) applies to the whole settlement.

The Framework Plan proposed in Clause 21.18-14 as exhibited is included in Figure 6.

Figure 6 Strzelecki Framework Plan



(ii) The issue

The key issue is whether the settlement boundary should be expanded to the north to accommodate an existing dwelling.

(iii) Submissions

Mark and Cara Sambell requested an expansion of the township boundary to the north to include their property which has been developed with a dwelling. They regarded the northern boundary shown on the Framework Plan as illogical since it does not take into account the

topography or vegetation of the land parcel through which it extends. The submission also suggested that the church at the eastern edge of the township boundary should be noted on the Framework Plan and have the Heritage Overlay applied to it.

Council originally submitted that the northern boundary of the township should remain as is as it connects the smaller properties in the community via an "indicative line". However, in its response to Panel Directions following the Hearing, it proposed for the settlement boundary to follow the Korumburra-Warragul Road alignment for the section adjacent to 1467 Korumburra-Warragul Road. This was then shown on a revised version of the Framework Plan included as part of the targeted notification in 2019 (Document 18A).

Council supported the submission that the church should be identified on the Framework Plan and advised that its potential inclusion in the Heritage Overlay would be considered as part of its next general amendment.

(iv) Discussion

The Panel highlights the direction of the Strategy discouraging growth in Strzelecki. It supports its underlying reasoning as sound and does not support the submitters' request to expand the settlement boundary to the north.

That said, the Panel also does not support the exhibited settlement boundary along what appears to be an arbitrary line that does not align with any lot boundaries or any other discernible boundary or topographical feature.

The Panel considers Council's response to the Panel Directions, that the boundary should run along the Korumburra-Warragul Road alignment for that section abutting 1467 Korumburra-Warragul Road, is an appropriate solution. The boundary should align with the northern edge of the Road Zone Category 1, consistent with the alignment of the boundary to the east of the land at 1469 Korumburra-Warragul Road as shown on the exhibited Framework Plan.

In relation to heritage issues raised, the Panel has no issue with the Framework Plan being amended to include reference to the church, or with the heritage values of the church being explored as part of a separate amendment.

(v) Conclusions

The Panel concludes:

- The Strzelecki Framework Plan should be amended to show the northern settlement boundary, where it abuts 1467 Korumburra-Warragul Road, as running along the same alignment of the northern edge of the Road Zone Category 1 designation.
- The inclusion of reference to the church in Strzelecki on the Framework Plan is appropriate.

(vi) Recommendations

16. Amend the Strzelecki Framework Plan to show the northern settlement boundary as shown on the amended Framework Plan that was the subject of further notification in 2019 and identify the existing church and to show the church located at the eastern edge of the settlement.

4.7 Walkerville North, South and Promontory View Estate

(i) Background

Walkerville is identified in the Strategy and exhibited Clause 21.17-9 as a Coastal Village. It comprises three separate settlements of Walkerville North, Walkerville South and Promontory Views estate. The Strategy identifies development constraints for Walkerville including:

- no reticulated water, sewer or gas
- prone to coastal processes and bushfire risk
- acid sulphate soils
- surrounding Crown Land (some of which is also an area of Aboriginal cultural heritage sensitivity)
- Environmental Significance Overlay Schedule 3 (Coastal Settlements – Non Residential Zones).

The Strategy identifies that growth should be contained in accordance with the *Victorian Coastal Strategy 2014*.

The three Framework Plans proposed in Clause 21.17-10 as exhibited are included in Figures 7, 8 and 9 below.

Figure 7 Walkerville – Promontory View Estate Framework Plan

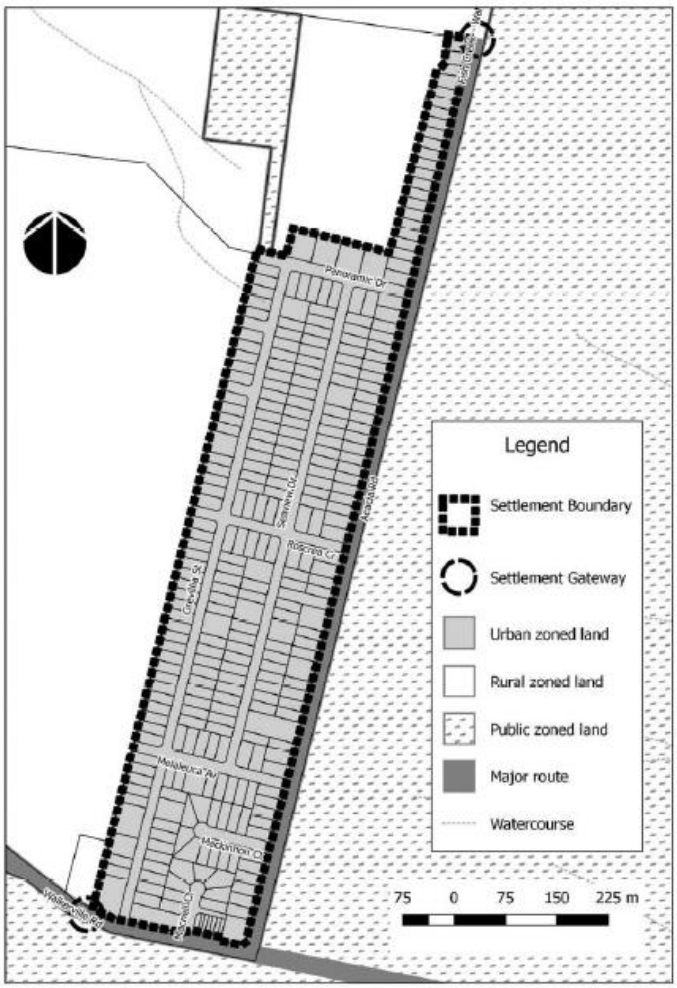


Figure 8 Walkerville North Framework Plan

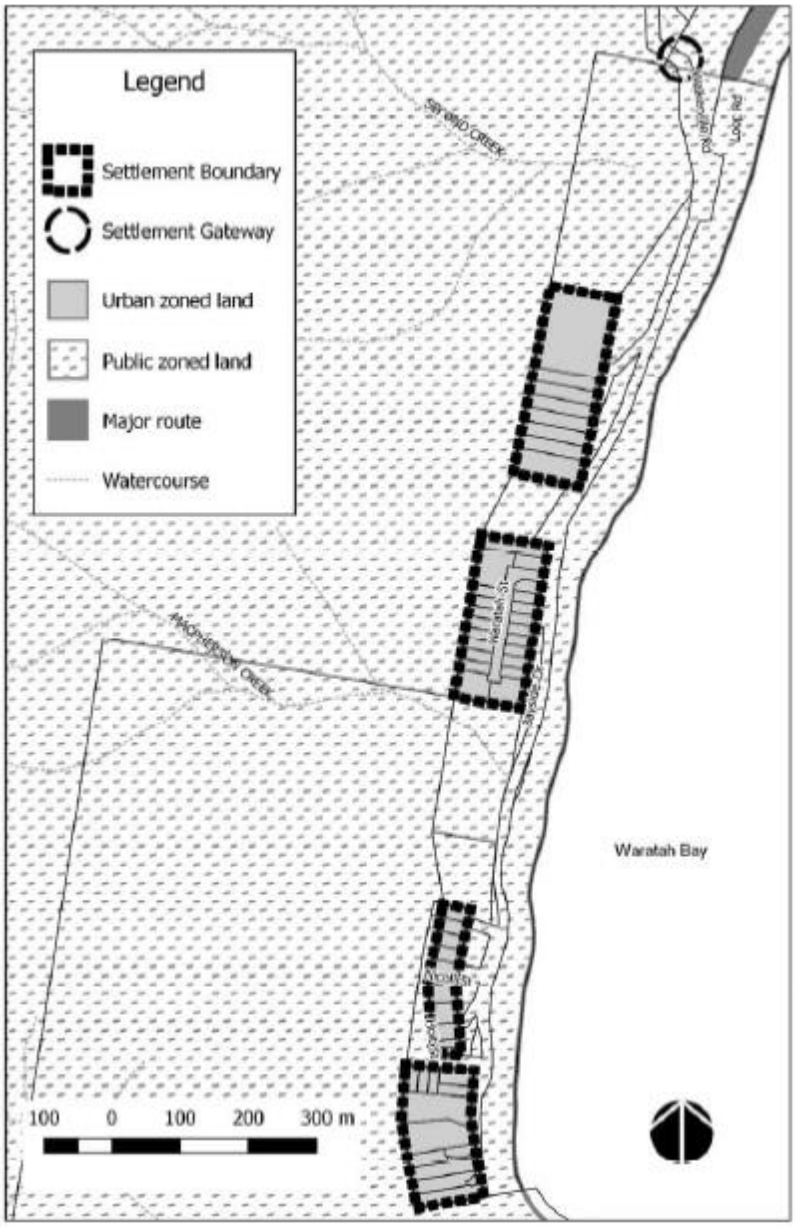
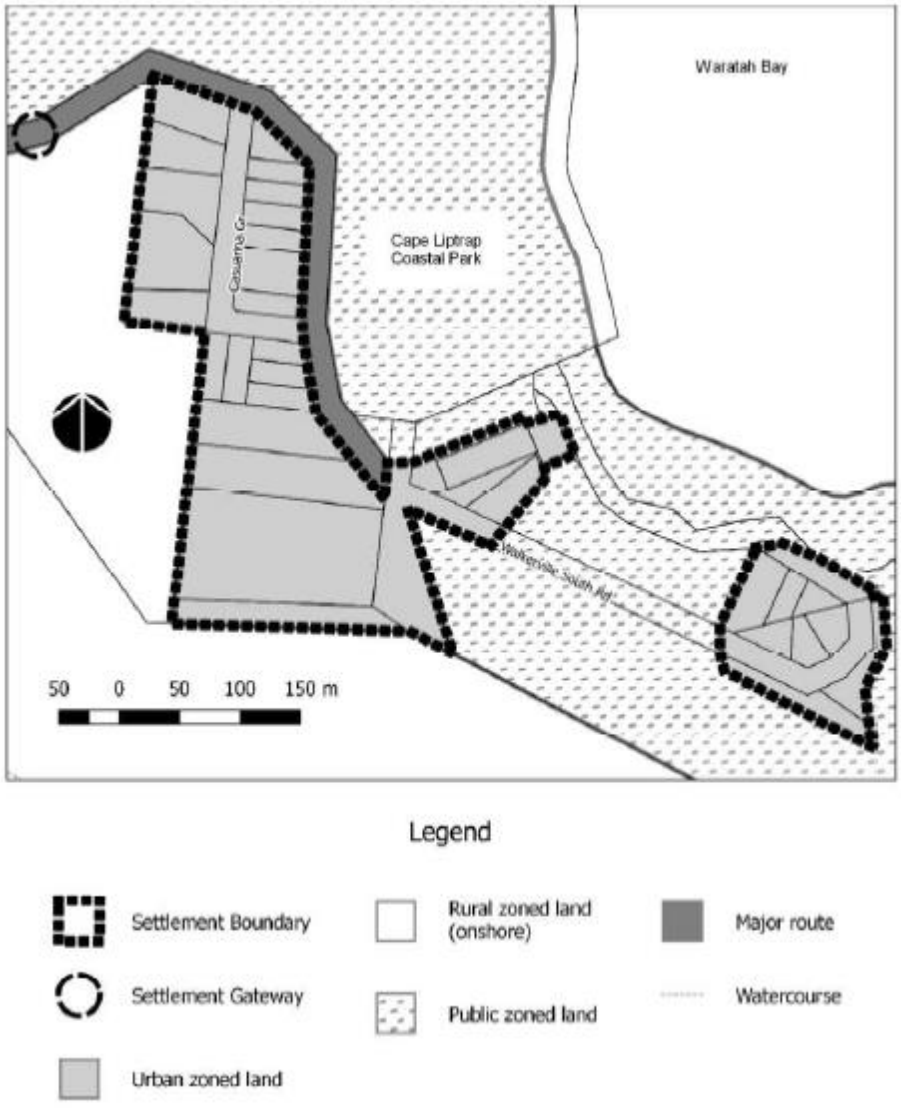


Figure 9 Walkerville South Framework Plan



(ii) The issues

Should the boundary of the Walkerville South Framework Plan be amended to reflect land in agricultural use? Are changes required to the Walkerville-Promontory Estate Framework Plan as a result of a development proposal to the west?

(iii) Submissions

There were a total of 42 submissions in relation to the Walkerville Framework Plans. The majority were supportive, requesting the strengthening of policies in some instances.

Two submissions requested changes to settlement boundaries. Tony Landy requested a minor adjustment to the Walkerville South Framework Plan to align with title boundaries of the neighbouring property. The submitter did not want part of the 8 hectare title for the neighbouring property included in the settlement boundary as the land forms part of a larger commercial farm.

Council noted that the portion of the property to be included in the settlement boundary is currently zoned Township Zone whilst the rest of the property is in the Farming Zone. Therefore, the boundary aligns with the current zoning of the land. On that basis, Council did not support the proposed boundary change at the Hearing and submitted it would have no practical impact on farming operations on the property. Nonetheless, Council noted that since the land forms part of a broader land parcel used for farming, it may be appropriate to consider the 'back zoning' of the property as part of a separate amendment process.

However, in its further correspondence after the Panel Hearing, Council subsequently advised that the Walkerville South Framework Plan should be amended to *exclude* this land from the township and showed this land sitting outside the settlement boundary of the amended Framework Plan (Document 18A).

However, this submission was not identified by Council as formally resolved in line with the *Planning and Environment Act 1987* and remains before the Panel for consideration.

A second submitter, Anseveta Nominees, objected to the Walkerville South Framework Plan. The submitter owns land with an area of approximately 404 hectares, directly abutting the Promontory View Estate to the west in Walkerville. The submitter objected to a range of issues in the Framework Plans, including:

- the Walkerville Basin as shown on plans in the Public Use Zone Schedule 6 has not been correctly mapped
- there is potential for septic effluent to discharge into the water body and water quality monitoring should be undertaken
- the Amendment discourages further commercial development apart from non-retail commercial tourism use on residential properties
- the submitter has put a proposal to Council to subdivide 40 hectares of its land adjacent to the Promontory View Estate into residential lots and to develop the subdivided area for an agriculture based, commercial sales and tourism attraction
- if the proposed commercial development proceeds, Council could take advantage of water and sewerage facilities to service the neighbouring estate.

Council responded that no change should be made to the Framework Plan. It advised that the issues raised in relation to the drainage basin and water quality are not relevant to the Amendment and that zoning issues associated with the Basin would be more appropriately dealt with through a general or specific amendment. Council also noted that the Amendment would not change the provisions or extent of the Township Zone which applies to the Promontory Estate and therefore it would not affect the ability to develop retail premises.

Council submitted that any application for subdivision of the submitters' land is a separate matter to be considered by Council that does not form part of this Amendment. It also confirmed that South Gippsland Water is the relevant authority for reticulated water and sewerage in Walkerville. That authority advised it has no current plans for new or extended provision of these services to any settlements in the municipality.

(iv) Discussion

The Panel does not agree with Council in relation to the land at 384 Walkerville South Road. The Panel is of the view that given the land is included in the Township Zone currently it should

also remain within the settlement boundary. However, if rezoning of the land to the Farming Zone is proposed in the future, the Panel considers that the settlement boundary could be changed at that time to ensure the zoning and settlement boundary are consistent.

In relation to the land abutting the Promontory Estate, the Panel considers:

- the issues raised about the Walkerville Basin, including its zoning and water quality concerns are important but are not matters to be dealt with as part of this Amendment given its scope as exhibited
- any proposal for subdivision of the submitters' land and commercial land use would need to be considered as part of a separate planning process.

(v) Conclusion

The Panel concludes:

- The property at 384 Walkerville South Road should remain within the settlement boundary of the Walkerville South Framework Plan whilst it remains in the Township Zone as shown on the exhibited Framework Plan.

4.8 Post Panel Hearing changes to Framework Plans initiated by Council

(i) Background

Council raised a number of issues in relation to Framework Plans in the Hearing and subsequently in response to Directions that were not expressly addressed in submissions. In most instances, it proposed minor changes or corrections.

(ii) The issues

Are the modifications suggested by Council in relation to various Frameworks Plans appropriate?

(iii) Submissions

General

During the course of the Hearings, various inaccuracies were identified as a result of the base mapping, with errors of up to 25 metres in the cadastre identified in some instances.

Bena

In its response to the Panel's post Hearing Directions, Council advised that the Bena Framework Plan at exhibited Clause 21.18 had been updated to the east and west along Main Road to match the alignment of the Township Zone boundary.

Buffalo

In its submission at the Panel Hearing, Council noted that the settlement boundary on the exhibited Framework Plan at Clause 21.18-4 was inconsistent with the Restructure Plan for Buffalo.

In its response to the Panel's Directions after the Hearing, Council advised that it proposed to change the Framework Plan to include Restructure Lot 1, and exclude two Restructure Lots

(Nos 2 and 3) from the settlement boundary, because they are 'no dwelling development' lots and are currently public land.

Kardella

Council advised that the Kardella Framework Plan as exhibited Clause 21.19-19 had been updated to include the former Kardella Road alignment to the south west within the 'Road Rezoning Investigation Area' as the land is currently in a road zone but is not being used as such.

Leongatha

Council advised that the Leongatha Framework Plan at exhibited Clause 21.12-3 had been updated to exclude land at 170 Simons Lane, Leongatha from the settlement boundary. It advised this was due to an error in the previous mapping which showed the settlement boundary extending through the middle of the lot. Council advised that the land is in the Farming Zone and that the Leongatha Structure Plan never intended for this land to be in an urban expansion area.

Ruby

Council submitted that the settlement boundary in the Ruby Framework Plan had been extended to the north west to include the CFA building in accordance with the Strategy.

Venus Bay

Council submitted that the Venus Bay Estate 1 Framework Plan at exhibited Clause 21.17-8 had been updated to reflect the changes proposed in Amendment C109. At that stage, DELWP had advised that that amendment had been approved by the Minister and was awaiting gazettal. This occurred subsequently, before this Report was issued.

(iv) Discussion

Bena

The Panel considers the change proposed by Council in relation to Bena is logical and that it is appropriate that the settlement boundary matches the Township Zone boundary.

Buffalo

In principle, the Panel supports the change proposed by Council to exclude Restructure Lots 2 and 3 from the settlement boundary. However, the Panel notes that in doing so, the settlement boundary will effectively exclude an area of land that is currently in the Township Zone. Accordingly, consideration may need to be given to the rezoning of Restructure Lots 2 and 3 to a more appropriate zone as part of a future amendment process.

In addition, the Panel notes the discussion about Restructure Lot 1 at Chapter 7 of this Report and the identified need for further assessment to be undertaken for that lot in relation to bushfire issues. Depending upon the outcome of that further assessment, subsequent changes may also be required to the settlement boundary if is determined that Restructure Lot 1 cannot accommodate a dwelling.

Kardella

The Panel supports Council's proposed change to the Kardella Framework Plan to include the former Kardella Road alignment to the south west within the 'Road Rezoning Investigation Area'. This is appropriate as it will assist in facilitating a planned outcome for the former road reserve.

Leongatha

The Panel accepts that the proposed amendment to the Leongatha Framework Plan to exclude the land at 170 Simons Lane is generally appropriate. It acknowledges the current zoning of the land as Farming Zone and Council's advice that the land was never intended to form part of the Township. The Panel also notes that this change was shown on the amended Framework Plan (Document 18A), and no subsequent submission was received from the affected landowner.

Ruby

The Panel supports the proposed change to the Ruby Framework Plan to include the CFA building and to reflect the settlement boundary included in the Strategy.

Venus Bay

In principle, the Panel supports Council's proposal to amend the Venus Bay Estate 1 Framework Plan to reflect changes within C109, provided they do not extend beyond the public processes associated with that amendment.

(v) Conclusions

The Panel concludes:

- The cadastre used as the base for all the mapping in the Amendment should be reviewed to improve accuracy to the extent possible.
- The post Panel Hearing changes proposed by Council to the Framework Plans for Bena, Kardella and Ruby (Document 18A) are appropriate.
- The post Hearing changes to the Buffalo Framework Plan are generally appropriate, subject to the outcome of the further bushfire assessment to be undertaken for Restructure Lot 1 confirming the ability to site a dwelling on the land. Consideration should be given to the rezoning of Restructure Lots 2 and 3 to a more appropriate zone as part of a future amendment process.
- The post Hearing change to the Leongatha Structure Plan in relation to 170 Simons Lane is supported.
- Amending the Venus Bay Estate 1 Framework Plan to reflect changes as part of Amendment C109 is appropriate, provided they have been subject to full public participation.

(vi) Recommendations

17. Amend the Framework Plans for Bena, Kardella and Ruby in accordance with the updated Framework Plans (Document 18A).

18. **Amend the Framework Plan for Buffalo in accordance with the updated Framework Plan (Document 18A), provided the further bushfire assessment to be undertaken for Restructure Lot 1 demonstrates it is possible to site a dwelling on the Lot.**
19. **Amend the Leongatha Framework Plan to exclude land at 170 Simons Lane from the settlement boundary in accordance with the amended Framework Plan (Document 18A).**
20. **Amend the Venus Bay Estate 1 Framework Plan in accordance with the updated Framework Plan, subject to the change being consistent with Amendment C109.**

5 Use of planning scheme provisions

In addition to updating and refining policy and Framework Plans, the Amendment also proposes to introduce substantial new provisions to guide the future use and development of land within subdivisions identified by Council as 'old and inappropriate'. These include historic railway and port settlements which have materialised to differing extents, former coal mining townships and government settlement schemes.

5.1 The issue

Have appropriate planning scheme 'tools' been used? More specifically:

- Is the Restructure Overlay appropriate?
- Is the use of an Incorporated Document appropriate?
- Is it necessary to apply Clause 51.01 Specific Sites and Exclusions to achieve the outcomes sought by the Incorporated Document?

The Panel considers the form and content of the Incorporated Document in greater detail in Chapter 6.

5.1 Is the Restructure Overlay appropriate?

This relates to whether the in principle use of the Restructure Overlay can be suitably justified in terms of its physical and policy context, as well as the outcomes sought to be achieved.

The appropriateness of applying the Restructure Overlay to specific land identified in the Amendment is considered in Chapter 7.

(i) Submissions

Council submitted that the use of the Restructure Overlay was both necessary and appropriate to address the legacy of small lots scattered in farming areas. It considered that this overlay would provide appropriate controls for the use and development of these properties to ensure improved land consolidation outcomes moving forward.

It emphasised the purpose of the Restructure Overlay, to facilitate land restructure of 'old and inappropriate subdivisions' with the intent to preserve and enhance the amenity of the area whilst reducing environmental impacts. Council highlighted the relevance of the following decision guidelines under the overlay:

- *Appropriate measures to cope with any environmental hazard or constraint affecting the land, including slope, drainage, salinity and erosion.*
- *The protection and enhancement of the natural environment and the character of the area including the retention of vegetation and fauna habitats and the need to revegetate along waterways, gullies, ridge lines and property boundaries.*
- *The availability of utility services, including sewerage, water, drainage, electricity, gas and telecommunications.*
- *The relationship of the intended use and development to the existing or likely use and development of adjoining and nearby land.*

- *The effect on surrounding uses, especially agricultural uses and nearby public land.*
- *The design of buildings.*

This Restructure Overlay aspect of the Amendment was particularly controversial. Many submitters were strongly opposed to the inclusion of their properties or identified settlements (or part) within the Restructure Overlay.

For a start, they contested the notion that their land formed part of an 'old' or 'inappropriate' subdivision. For example, submitters in some settlements such as Port Welshpool pointed out that Council had allowed the further subdivision of their properties in the recent past. Alternatively, they submitted that their land could still be used or developed productively in line with zone and current overlay provisions, such that it was not inappropriate.

Beyond the issue of classification, many submitters fundamentally opposed the notion that the Restructure Overlay was required to give effect to strategic planning intentions for these parts of the municipality, or that it was fair given existing land tenure. This was particularly acute in settlements where there were small lots in multiple ownership that would otherwise need to be consolidated to use or develop land for specific purposes such as a dwelling.

Submitters such as Ms Watson considered that the application of the Restructure Overlay was inconsistent with the indefeasibility of title in Victoria and may be unlawful to this extent. She considered the use of the overlay in the manner proposed by Council would effectively deprive land owners of their 'right to title' since they would be significantly constrained in terms of how they could use or develop such land.

(ii) Discussion

This Amendment highlights the need for balance when applying planning provisions to achieve acceptable outcomes consistent with the objectives of planning in Victoria which include:

> *(a) to provide for the fair, orderly, economic and sustainable use, and development of land;*
>
> *(b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;*
>
> *(c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;…*
>
> *(e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;…*
>
> *…*
>
> *(g) to balance the present and future interests of all Victorians.*

The challenge is that while applying a Restructure Overlay to nominated subdivisions such as these is principally aimed at ensuring the 'orderly' and 'sustainable' use and development of land, not everyone affected will regard it as 'fair' or leading to acceptable economic outcomes.

From the outset, the Panel recognises the sensitivities of this Amendment and its potential range of impacts on land owners and occupiers.

Many planning scheme amendments change opportunities afforded to land owners on a personal or township level. By their nature, Restructure Overlays have particular potential to directly impact on owners' expectations for the future of their landholding.

Notwithstanding these personal impacts, planning authorities and independent panels need to engage in sound strategic future planning. This is a key way of balancing the present and future interest of "all Victorians".

In this Amendment, Council proposes to regulate of the use and development of land in identified subdivisions to protect the integrity of the underlying zone and to respond suitably to environmental and land use constraints. As summarised in Chapter 2, there are a consistent suite of existing local policies that identify the significant challenges arising from the legacy of small lots in farming zones.

The Panel is keenly attuned to the potential impacts of allowing inappropriate use or development of these lots. As identified by Council, these include the loss or fragmentation of productive agricultural land (viewed more broadly than individual parcels), land use conflict, dilution of zoning integrity and negative economic impacts (such as where farmland is inflated in value to recognise opportunities for rural residential land use).

On balance, the Panel considers that Council has made a difficult but proper decision to support the preparation of the Amendment with the Restructure Overlay as its key tool to achieve improved outcomes for nominated subdivisions moving forward.

The Restructure Overlay is a unique provision within the Victoria Planning Provisions that provides a direct opportunity to seek the restructure of land in a form that is more consistent with current planning objectives. It does this by providing constraints on subdivision or requiring a permit for buildings to be in accordance with a Restructure Plan included in the Schedule to the overlay.

Given the circumstances of the settlements in question, the Panel considers that the decision guidelines within the overlay are especially relevant when determining whether a permit should be granted for subdivision or for structures. These include measures to cope with environmental hazards or constraints; the protection and enhancement of the natural environment; the availability of utilities and the effect on surrounding land use and development.

This is a further indicator that the overlay is being used appropriately to achieve strategic planning outcomes deriving from state and local planning policies.

The issue of whether nominated subdivisions or settlements have been validly included in the Restructure Overlay is explored in more detail in Chapter 7.

The Panel notes upfront that there is no technical legal precondition for land being regarded as an 'old and inappropriate subdivision'. This is not a pejorative assessment. Rather, the underlying concept is intended to capture past subdivisions that:

- would not be created under current planning controls or policies (that is, 'old'), and

- have the potential to generate negative impacts having regard to their particular characteristics including their physical and policy setting (that is, 'inappropriate').

In summary, the Panel is persuaded by Council's submissions, zone and overlay controls and as verified by its inspections that each subdivision or settlement proposed to be included in the Restructure Overlay exhibits these elements, such that it is a suitable candidate for inclusion in the Restructure Overlay.

The Panel is conscious that many submitters believe their property rights would be unreasonably impacted if the Restructure Overlay was applied. There is no doubt that these rights would be affected in so far as land use or development would be regulated in a more confined way by the planning scheme. For example, depending upon the final detailed wording of the controls that are to be applied, certain uses could only be approved if land was consolidated in a particular way. This is why the Panel has carefully considered the content of the Incorporated Document in Chapter 6 below to identify whether it has struck the right balance.

That said, this regime falls short of depriving people of title to their land as claimed by some submitters. Rather, the planning scheme is entitled to control the circumstances under which land could be used or developed, and the preconditions for this. For example, it is not unusual for a table of uses under certain zones to be crafted to prohibit specific land uses, subject to the Ministerial Direction on the Form and Content of Planning Schemes. In this instance, this is seen by the designation of 'no dwelling development' lots, using the Incorporated Document together with Specific Sites and Exclusions provision.

The fact that there may be significant pre-conditions on applying for a particular land use or development that are contingent on altered property rights is not the equivalent of denying title. It will be up to a particular landowner as to whether it considers this trade off is worthwhile when determining which use or development to pursue.

The Panel also recognises that there may be other ways to encourage or achieve lot consolidation, such as financial incentives or land acquisition that sit outside the planning scheme. These may add to or surpass the effectiveness of the Restructure Overlay, which may realistically take decades to effect change. However, none of these prospects are currently before the Panel as part of this Amendment.

(iii) Conclusion

The Panel concludes:

- The use of the Restructure Overlay as a key element of this Amendment is supported in principle as consistent with long term strategic planning outcomes for the land identified.

5.2 Is the use of an Incorporated Document appropriate?

(i) Background and main features

The document titled *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire Council* was prepared by Council as part of the Amendment.[14] It consists of a written and plan component, providing background to existing lot patterns and detailing how the Restructure Overlay provisions will operate for Restructure Lots identified in the document.

It would be listed as an Incorporated Document within the planning scheme (formerly Clause 81.01, now Clause 72.04) and would be invoked mainly when considering applications under Clause 45.05 – Restructure Plan Overlay (Schedules 1 to 21). The document would also be listed in the Schedule to Specific Sites and Exclusions (formerly Clause 52.03, now Clause 51.01) since it makes changes to the operation of zone or overlay controls.

The Incorporated Document as exhibited explains that the application of the Restructure Overlay is a means of managing existing subdivided areas which would otherwise have "*serious environmental, servicing and social impacts (including environmental risk to the community) as well as the potential for amenity conflict with existing agricultural uses and the possible proliferation of dwellings [in appropriate locations]*".

As expressed, the Incorporated Document intends to:

- remove uncertainty for landowners about their sites
- establish an appropriate framework for statutory planning decision making.

As exhibited, objectives relate to:

- minimising environmental effects and risks, impacts on agriculture, landscape, water catchments and community servicing
- ensuring restructure assists in achieving environmental and landscape objectives
- ensuring adequate servicing provision
- recognising the influence of flooding, inundation, bushfire and erosion and the need for responsive siting and design to minimise risk
- encouraging the closure of redundant road reserves and their consolidation into adjoining land
- providing a framework for appropriate lot configurations.

As mentioned, various versions of the Incorporated Document were prepared by Council, with version 1 included in the Amendment documentation as exhibited, version 2 for discussion purposes at the Hearing and version 3 the subject of formal further notice at the direction of the Panel following the first Hearing. This resulted in a further Hearing to provide natural justice to submitters.

A central new objective was proposed at clause 3.0 of version 2 to:

[14] The version exhibited as part of the re-authorised Amendment was dated August 2017 (referred to as version 1 in this Report), which incorporated inclusions to the initial draft following resolutions of Council on 24 August 2016.

Prevent the further fragmentation of landholdings and reduce the number of small and inappropriately located lots in Restructure Overlay areas by encouraging the subdivisional restructuring and consolidation of multiple-lot landholdings.

Key elements proposed in the various versions of the Incorporated Document include:

- individual Restructure Plans for 21 different areas comprising individual Restructure Lots
- land within the Farming Zone can be used for a dwelling without a planning permit the if land is consolidated in accordance with a Restructure Plan and there is no existing dwelling on the consolidated lot. Where relevant, the dwelling would need to be located outside the Land Subject to Inundation Overlay.
- in version 3, the table has been reformatted to clarify what is allowed for each proposed Restructure Lot. The language now refers to Type A Lots (where consolidation is needed before any section 2, permit-required use could be permitted) and Type B Lots (where all forms of accommodation are prohibited)
- in version 3 of the draft document, land could not be used for any permit-required use unless consolidated in line with a relevant Restructure Plan
- land identified as a 'no dwelling development lot' or 'accommodation prohibited' lot (mainly vegetated Crown land) could not be developed for these purposes irrespective of the underlying zone or overlay controls
- Restructure Plans generally provide preferred outcomes for consolidated disused road reserves although different versions of the Incorporated Document provide varying levels of flexibility. In version 3, the mapping has changed to identify 'road reserves to be included in Lot' but with potential increased flexibility for departures. It is not clear to the Panel that all people notified were explicitly made aware of this change despite requiring an outline of all changes that may affect constituents
- in version 1, subdivision would need to be 'in accordance' with the Restructure Plan, although some flexibility is proposed in versions 2 and 3 to approve a different lot configuration for Restructure Lots. For example, In version 3, there is capacity for Council to permit a dwelling to be constructed on land or to allow subdivision that does not conform with a Restructure Lot, where the variation is 'minor' in Council's opinion, and would not increase the number of dwelling entitlements under the Restructure Plan
- disused road reserves 'should' be consolidated into Restructure Lots to the 'maximum extent possible'. There would be scope for variation from the Restructure Plan subject to agreement of the relevant (road) authority and adjacent landowners.
- ordinarily, the requirements to obtain additional permits for development under zone and overlay provisions of the scheme will remain as they are since the document confirms it applies in addition to zone, overlay or specific requirements.
- however, the provisions of the Incorporated Document are expressed to prevail over any other planning scheme requirement that may conflict with its provisions.

Mandatory decision guidelines are provided in Clause 5.0 (as exhibited) to ensure that:

- no more than a single dwelling can be constructed on a Restructure Lot (consistent with the controls of the Farming Zone)

- no dwelling can be constructed until all requirements of the Restructure Plan are met and all land within the Restructure Plan is consolidated into one lot
- new dwellings are located outside the Land Subject to Inundation Overlay
- the dwelling has been appropriately sited to minimise environmental impacts, impacts on agriculture, landscapes and water catchment areas. This would be determined when a planning permit is applied for the development of the land as a dwelling.

At the further Hearing, submitters raised concerns that Council's record of affected owners may not have been updated to include all current land owners and therefore not all landowners may be aware of the amended version of the Incorporated Document (Document 18B).

The Panel had expected that this information would have been kept up to date. If it was not, Council and the Minister should consider further processes for notification if elements of the updated documentation are ultimately preferred.

(ii) Submissions

While the proposed form and content of the Incorporated Document was a concern for many submitters, the Panel was not presented with substantive submissions suggesting that this planning scheme *mechanism* was inappropriate (assuming the Restructure Overlay may be supported in principle).

Council explained that it was important to create a document that was transparent, readily available and that formed part of the planning scheme to provide detailed controls for land within Restructure Plans.

It recognised that such document could only be changed by planning scheme amendment, so it sought to in-build discretion to vary the form of Restructure Plans, especially in respect of the consolidation of land identified for roads. This is discussed in Chapter 6.

(iii) Discussion

The Panel accepts that Council's proposed use of an Incorporated Document to provide controls for land in the Restructure Overlay is both necessary and appropriate.

Relevant to this Amendment, *Planning Practice Note 13: Incorporated and Reference Documents* confirms that a document should be incorporated into the planning scheme when:

> 1. *The document is essential to the administration or enforcement of the planning scheme, that is, without the document the scheme cannot be properly understood …*
> 2. *The document is necessary to determine the extent of a planning control, or whether planning permission is required in a particular case.*
>
> *…*
>
> 4. *The document will be used to guide the exercise of discretion by the responsible authority.*

In this instance, the Incorporated Document is needed to provide relevant objectives and varied requirements pertaining to the Restructure Lots that interface with zone and overlay provisions. This relates particularly to the first and second points.

Another important component of the Incorporated Document is to provide objectives to guide the exercise of discretion, and to confine that discretion in certain circumstances. This relates to the second and fourth points.

Therefore, the Panel confirms this mechanism is a legitimate approach to providing detailed guidance for the operation of the Restructure Overlay beyond what can readily be included in the Schedule to that overlay, which is essentially confined to referencing the Restructure Plans.

This approach is also consistent with standard practice. A number of municipalities have used an Incorporated Document that has received Panel support and subsequent Ministerial approval.[15]

Planning Practice Note 13 also advises that "*if the document includes plans or guidelines that are lengthy, or contains illustrations, consider publishing them separately and including them as an incorporated document*".

The structure of this Amendment is quite complex. An element accompanying the Restructure Plans is to identify the capacity of each lot for certain types of development (dwelling or permit-required use following consolidation, or no dwelling development lot). While it could be thought it is sufficient to reference individual Restructure Plans for each settlement or subdivision in the Schedule to the Restructure Overlay, the Panel tends to the view that it is reasonable to include the detailed Restructure Plans and lots comprising them in the Incorporated Document to identify which suite of planning scheme provisions applies to which land.

A consequence of this is that the entirety of the Incorporated Document will form part of the planning scheme and a formal amendment would be needed to change its content. Otherwise, if the mapping was only contained in a Restructure Plan under the Restructure Overlay, its content could be changed at Council level without the need for the scrutiny that an Amendment would require.

Another important role of this document is that it seeks to change entitlements relating to land *use*. This is not squarely addressed by the provisions of the Restructure Overlay, which are more directed to preconditions for subdivision and development. This issue of land use impacts is discussed further in Chapter 6.

(iv) Conclusion

The Panel concludes:
The use of an Incorporated Document is appropriate for this Amendment:

- Consideration should be given to further processes for notification of the Incorporated Document if elements of the updated documentation are ultimately

[15] Such as Macedon Ranges and Wellington Shire Councils.

preferred and it is established that not all landowners affected by the Restructure Overlay received the targeted notification undertaken in 2019.

(v) Recommendation

The Panel recommends:

21. Council confirm whether all current landowners affected by the Restructure Overlay received targeted notification in 2019 and consider whether further notification processes are required before progressing the Amendment such as notice directed by the Minister for Planning.

5.3 Is it necessary to apply Clause 51.01 Specific Sites and Exclusions to achieve the outcomes sought by the Incorporated Document?

(i) Submissions

Council was initially uncertain whether it had properly proposed to include the Restructure Lots within the Specific Sites and Exclusions particular provision (as exhibited), or whether the application of the Restructure Overlay combined with the proposed Incorporated Document would be sufficient. Council raised this issue for discussion at the Hearing.

Capacity to override other planning scheme provisions

The Hamletts made submissions opposing the inclusion of land in Port Welshpool as part of the Amendment. They raised a number of detailed concerns and questioned the ability of the Incorporated Document to override other provisions of the planning scheme. A particular concern was whether the Incorporated Document could lawfully purport to prevail over other planning scheme provisions if any inconsistency was created. They submitted that:

> *We believe this is outside the provision of the Victorian Planning Scheme and a misuse of the LSIO and BMO Overlays to justify the introduction of C90 RO which when in force extinguishes the right for all unconsolidated lots to apply for a planning permit under the relevant overlays.*

For example, they considered that if they could demonstrate it was appropriate to grant a permit for a dwelling under the provisions of the Land Subject to Inundation Overlay or Bushfire Management Overlay, it would not be possible or reasonable to withhold this permission until the land was consolidated.

Preserving existing use rights

Petra and Frank Miller's made a submission pertaining to their land in Toora, querying whether existing use rights would be preserved under the proposed regime. For example, could a landowner rebuild a dwelling destroyed by fire?

In their further submissions in response to targeted notification in 2019, the Hamletts also emphasised it would not be fair or appropriate for the provisions of the Incorporated Document to override existing use rights.

At the further Hearing, Council accepted that a specific 'carve out' could (or should) be provided in the Incorporated Document, so that if land benefits from existing use rights, that use could continue without the land first being consolidated.

(ii) Discussion

The purpose of the Specific Sites and Exclusions provision is[16]:

> *To recognise specific controls designed to achieve a particular land use and development outcome existing on the approval date.*
>
> *To provide in extraordinary circumstances specific controls designed to achieve a particular land use and development outcome.*

In principle, the subdivisions identified by Council warrant specific controls. The Panel accepts that the circumstances of these subdivisions constitute 'extraordinary circumstances' as this threshold has been understood by previous Panels. They have resulted in lot and road patterns that are not consistent with current strategic planning practice and tend to generate expectations that do not align well with current planning provisions, with associated risks.

The Panel agrees with Council that it is both appropriate and necessary to use the combination of planning scheme tools proposed. That is, applying the Restructure Overlay, incorporating the Restructure Plans with accompanying controls and including the land in the Specific Sites and Exclusions provision as a combined suite of measures to give effect to restructure intentions.

While this may seem a 'belts and braces' approach, in the absence of including the restructure properties in the Specific Sites and Exclusions provision, the Incorporated Document is unlikely to otherwise have the capacity to vary underlying provisions of the planning scheme lawfully; such as to make the use of land for a dwelling in the Farming Zone as-of-right on land less than 40 hectares, or to exempt the need from a permit for certain types of buildings and works under that zone. Without this provision, it may also otherwise be possible for certain planning scheme permissions to be granted before land was consolidated, detracting from the intent of the new regime.

Capacity to override other planning scheme provisions

In this context, lawfulness and reasonableness are two different but related matters.

As to lawfulness, Clause 51.01-1 expressly enables a specific control for identified land to exclude any other use or development control in the scheme. The Incorporated Document would take up this opportunity by being included in the Schedule to the Specific Sites and Exclusions provision.

The Panel generally regards this as an answer to the Hamlett's questions about the source of the power proposed to be used by Council.

That said, it may still be prudent for Council to obtain legal advice to confirm this and the validity of all other aspects of the Incorporated Document if the Amendment is progressed.

[16] Clause 51.01 of the current planning scheme.

The Panel also notes the generally accepted legal maxim that the greater includes the lesser, so where there is a power for a specific control to *exclude* a provision, it could also *vary* it as is proposed in some parts of the Incorporated Document. For example, in some instances, the Incorporated Document seeks to prohibit certain land uses that would otherwise be permitted by the zone, such as in the case of 'no dwelling development' or 'accommodation prohibited' lot. In other instances, it would vary the underlying zone controls by providing a precondition for a permit-required use – a requirement to consolidate land in a particular way. Both would appear to be valid.

Whilst lawful, the question is whether this approach is reasonable and justified. For reasons explained in Chapter 6, where this technique is used by the amendment, it is supported by the Panel as necessary to achieve suitable strategic outcomes, provided that suitable land uses are regulated.

5.4 Conclusion

The Panel concludes:

- The use of the Specific Sites and Exemptions provision as a necessary and appropriate part of the Amendment.

6 Is the form and content of the Incorporated Document appropriate?

6.1 General commentary and identification of key issues

Numerous concerns were raised by submitters about the content of the Incorporated Document. The overall objectives of the Incorporated Document were not overly controversial. The controversial aspect was their application to nominated settlements as raised in submissions. This is addressed principally in Chapters 5 and 7.

Some submitters were critical of how the provisions of the Incorporated Document would work, including requirements for consolidation before certain permits could be issued, the extent of certain exemptions and the way the document proposes to deal with disused road reserves.

In addition, Panel raised its own concerns about certain aspects of the document that are vital to its proper function.

Council explained how it formulated the provisions of the Incorporated Document and emphasised the practical need for flexibility, such as to be able to agglomerate disused road reserves into Restructure Lots without having to amend the Incorporated Document.

The submissions and the Panel raised a number of key issues for consideration, including whether the content and format of the Incorporated Document were appropriate. Central questions were:

i. Is it appropriate to allow the use of land in the Farming Zone with an area less than 40 hectares for a dwelling without a permit if land is consolidated, but to prevent this land use otherwise (proposed in all versions)?
ii. Is it reasonable to require consolidation before any permit-required use could be carried out (proposed in version 3 only)?
iii. Are appropriate exemptions provided? How should buildings and works be controlled (varied in each version)?
iv. Is it reasonable to prohibit all forms of Accommodation on land identified as 'accommodation prohibited' lots (version 3)?
v. How valid is the proposed approach to disused road reserves? How will this interact with other processes for road closure?
vi. Should there be inbuilt capacity for other variations from Restructure Plans subject to various consents?

6.2 Content of the Incorporated Document

(i) Allowing the use of land for dwellings if land is consolidated

As explained, the Incorporated Document would modify opportunities to use or develop land, largely contingent on its consolidation in the manner outlined in the document. This was highly controversial.

A central tenet of all versions of the Incorporated Document is that a landowner would be entitled to use land for a dwelling without a planning permit if land was consolidated or subdivided in accordance with an applicable Restructure Plan (except on a designated 'no dwelling development' Restructure Lot). Consequently, there would be no need to justify the use of the land for a dwelling on a restructured lot in the Farming Zone, irrespective of lot size.

Council submitted that it was keenly focused on providing a reasonable balance between the rights of landholders and appropriate strategic planning outcomes. Where it had provided a new dwelling opportunity, it considered that this could be sustained by the relevant physical and policy context and that it was a reasonable "incentive" for the consolidation of identified lots under the Restructure Overlay.

This is probably legitimate in the sense that there may otherwise be little practical impetus to consolidate what Council regards as 'old and inappropriate subdivisions'.

However, the Panel considers that if this fundamental aspect of the provisions is to remain, it is obliged to give careful consideration to whether the in principle use of each restructured lot for a dwelling would be appropriate as a matter of orderly and proper planning, including whether this would be consistent with relevant state planning policy directions.

This opportunity would contrast directly with the existing provisions of the Farming Zone and various planning policies, including Clause 22.05 which call for strong justification for a dwelling to support agriculture on the land, especially for properties between 4.1 and 40 hectares.

Relevant Victorian Civil and Administrative Tribunal decisions

For example, numerous decisions of VCAT have refused to grant a permit for the use of a dwelling on small lots in the Farming Zone, expressing concerns that it would detract from the integrity of the zone purpose and may adversely affect rural character.[17]

The Panel has had regard to this line of reasoning when assessing this Amendment, although the circumstances of Restructure Lots raise important additional considerations involving the need for balanced strategic planning and net community benefit. This is consistent with the recognition of the challenges posed by 'old and inappropriate subdivisions' in the Shire in existing planning scheme provisions, proposed to be substantially enhanced by the current Amendment.

In *Mackie v South Gippsland SC*,[18] VCAT declined to delete a permit condition requiring consolidation of land within an old or inappropriate subdivision. One reason was the benefits of consolidation for reducing risks to water quality within the nearby catchment. It also noted that given the proximity of the site to the town boundary and potential future development of each small lot (or two slightly larger lots), this would preclude agglomeration of agricultural land and would "*further blur the town's true settlement boundary*", with both outcomes undesirable in a policy sense.

17 For example, *Luff v South Gippsland SC* [2012] VCAT 1793 and *I & C Chalmers v South Gippsland SC* [2017] VCAT 704.
18 [2015] VCAT 257.

The decision of *Fitzpatrick v South Gippsland SC*[19] specifically grappled with the historic legacy of fragmented small lots in the Shire. The Panel considers the reasoning in that decision provides some guidance as to how to strike the right balance for 'old and inappropriate subdivisions'.

In that case, VCAT approved the use of a relatively confined property for a dwelling in the Farming Zone conditional on the consolidation of seven titles. It considered that a consolidated single lot of approximately 15 hectares would allow for productive agriculture and would be more characteristic of the size of surrounding farming lots. On the need to manage existing (not ideal) circumstances to achieve acceptable future outcomes (similar to those presented for the land encompassed by the current Amendment), the Tribunal commented:

> *State policy aims to protect and promote the importance of a strong agricultural base, including protection of productive land from fragmentation and unplanned development ...*
>
> *I also note that state planning policy encourages the consolidation of old inappropriate lots/subdivisions, and that the council has no intention to rezone the land to other than the FZ. On this basis, and in consideration of my following discussion here, I agree with the Council that there is no strategic justification for the proposed development on the review lot if considered in isolation. However, I also find that consolidation of the lots in the tenement of which the review lot is a part would result in a better long term planning outcome regarding the future of local agricultural production, than retention of seven separate titles that could be dispersed individually at some time in the future.*
>
> *…*
>
> *Approval of a dwelling on the review lot as a separate lot (without its consolidation with larger lots) would provide no protection from the lot being isolated from agricultural production into the future. This could occur through the sale of other lots in the tenement (subject to development of unformed surveyed road reserves). This would provide an unacceptable outcome in the FZ under current planning provisions ...*
>
> *I also find that separation of the review lot from the larger tenement would cut into the agricultural potential of the remaining six lots, and thereby contribute to the fragmentation of productive agricultural land in the area. Both matters are contrary to state and local policy.*

Does the exhibited Amendment strike the right balance?

At the Hearing, the Panel raised the prospect of certain mid-sized properties still needing to apply for a planning permit for the use of land as a dwelling, even though consolidated, rather than having an automatic entitlement for residential land use as proposed in all versions of the Incorporated Document.

[19] [2017] VCAT 843. This was an application for review of Council's refusal to grant a permit.

Council provided a detailed response in its reply to the Panel's Directions. It considered that 'old and inappropriate subdivisions' can lead to adverse impacts on agricultural activity, amenity and environmental values. It explained that "*without this incentive to consolidate (which is a costly process), opportunities for consolidation are likely to be lost as separate lots continue to change hands, specifically as lots from multiple-lot landholdings are sold off*". It therefore emphasised the need for the use of all land for a dwelling to be as-of-right if lots within the Restructure Plans were consolidated.

The Panel is also keenly aware of the pressure that is placed on Council when small lots in 'old or inappropriate' subdivisions are onsold, especially when they are not of a size that is inherently suitable for agriculture and there is a potential expectation they could be developed with a dwelling. This surfaced in a number of submissions to this Amendment.

Overall, the Panel appreciates Council's position that the efficacy of the Restructure Plans for these settlements depends largely on the provision of an incentive for consolidation. That incentive is an entitlement to use the land as a dwelling.

The Panel highlights that the effective 'trade off' for consolidation is to allow a discrete number of dwellings as-of-right in farming zones without a fulsome consideration of whether they would be justified under the rigorous assessment tools within those zones.

On Council's calculations, there are a total of 41 new dwelling opportunities created by the Amendment across all included settlements.[20] Of these, Council identified that only 18 new dwelling opportunities would be on Farming zoned land between 4.1 and 40 hectares, typically in locations where a "*high level of rural lifestyle development*" already exists (such as in Jumbunna and Outtrim) and it is unlikely the land would transition back to commercial agriculture.

In effect, Council has broadly assessed the impacts of allowing such land to be used as a dwelling having regard to considerations of maintaining viable agriculture, avoiding land use conflicts, taking account of environmental sensitivity and the like as part of this Amendment process.

The Panel accepts that this balancing exercise is sufficient for most consolidated sites, but Panel still urges Council to critically evaluate the suitability of new dwelling opportunities on a small number of lots identified in its consideration of individual Restructure Plans in Chapter 7 to avoid diminishing strategic objectives for such land.

(ii) Should applications for dwellings be able to be considered without consolidation?

Many submitters considered that existing opportunities under the Farming Zone should be preserved, such that it would be possible to apply for a planning permit to use land for a dwelling where the lot is less than 40 hectares. They considered that the requirement to consolidate first would be unfair or potentially unachievable. Some submitters urged the Panel to preserve existing opportunities, especially since overlay controls could be applied to ensure acceptable outcomes in terms of bushfire and flooding when development permits were applied for.

[20] One Restructure Lot would be of a size where a dwelling would not require use permission. The remainder would be less than 40 hectares.

The Panel considers it is relevant that there is no current *entitlement* for these sites to be developed with dwellings or other forms of accommodation unless justified in the Farming Zone or similar. Rather, this would be subject to the exercise of discretion which would include an assessment of the proposal against the relevant decision guidelines of the zone as well as any relevant overlay controls including, for example, bushfire risk at a site and landscape level.

The Amendment, especially as progressed by statutory authorities and Council between the Directions Hearing and full Hearing, has undertaken this work at a settlement-wide level.

This is another area where balance is required between recognising existing land holdings but providing an improved strategic direction moving forward.

The issues arising from 'old and inappropriate subdivisions' will only be compounded further if small lots are permitted to be on-sold with potential expectations of ad hoc dwelling development. For example, some subdivisions are so obviously inappropriate that catastrophic environmental outcomes could potentially result from the development of a dwelling on each lot on title.

With respect, the Panel is unable to accept submissions by well-meaning residents that they are best placed to individually decide whether to assume certain risks, such as bushfire or flooding. The planning scheme was once more flexible in this regard but recent changes to state-wide planning schemes have clearly confirmed that planning authorities must take landscape and settlement-wide approaches to risk (beyond individual site assessments) and that the protection of human life is a priority that overrides all other considerations in the planning scheme.

The Panel is of the view that the restrictions proposed in the exhibited document are acceptable in this context.

(iii) Is it reasonable to require consolidation before any permit-required use could be carried out?

Significantly, version 3 of the Incorporated Document proposes to expand the requirement to consolidate land before *any other use of land* for which a planning permit is required (section 2 use) can be approved. This was a unilateral change by Council that the Panel had not requested or suggested.

Council indicated that its main intention was to ensure that land was consolidated before it could be used for overnight stays (consistent with the CMA's position) but considered that additional regulation of all forms of use on land within the Restructure Overlay was justified. It explained that this requirement would be a stronger incentive to consolidate, would avoid the potential for land use conflicts and would ensure that approved uses that do not require consolidation would not raise property prices and hinder the overall consolidation of the Restructure Lot.

The CFA also provided general comments applying to the Amendment more broadly (as originally exhibited) stating:

CFA has no opinion on whether 'other' buildings should be incorporated into the restructure overlays. CFA recommends further consideration is required based on:

- *The type of building and its associated use ie whether the building is associated with a dwelling*
- *Whether the building will be habitable*
- *What if any additional bushfire considerations or protection measures should be included in the incorporated plan document.*

CFA strongly discourages any changes that would exempt:

- *Buildings and works for buildings that are habitable (other than a dwelling), including accommodation and other vulnerable or tourism related uses.*

A number of submitters emphasised that this was unduly restrictive. It would compound the concerns they expressed about the potential for poor land management, land use stagnation and resultant detriments to the viability of settlements.

In the Panel's opinion, the balance it has identified above would be unreasonably disrupted by the proposal to preclude permits for the use and development of land for any use in section 2 of the zone unless land is consolidated.

The Panel strongly opposes the proposal to amend the Incorporated Document to include this level of restriction. It would be an overly blunt tool.

For one, it is not necessary to achieve strategic objectives to ultimately restructure areas to appropriately sized lots to reflect zone purposes. Neither is it necessary to address environmental hazards since it would not create any problematic exemptions from the need for a permit under the Bushfire Management Overlay or Land Subject to Inundation Overlay.

At most, if Council was inclined to expand the scope of the restriction, it could potentially apply to all forms of accommodation, as suggested by the CMA. However, the Panel is not persuaded that this would be warranted as part of the suite of provisions in the Incorporated Document.

Dwellings are a particular category of land use that are specifically addressed by the provisions of the Farming Zone, since they carry particular risks for the orderly use and development of this land. Other uses could potentially be less problematic.

The Panel considers there is significant opportunity as explained by some submitters for tourism-related uses, especially where they are sensitive to their environments. Likewise, there may be other permit-required uses that could reasonably support agricultural enterprises. Looking to the potential future of these settlements, it would not be reasonable to prevent a permit for such land uses from being applied for until land was consolidated.

If this occurs, part of the permission required is likely to be for the development of the land under the Restructure Overlay. The objectives and decision guidelines of that overlay would inform whether such use is reasonable in this particular context. Likewise, overlays relating to environmental hazards would inform whether such development could be approved and, if so, how it should be designed and sited.

In these circumstances, the Panel is also sympathetic to concerns of submitters that these controls may have the potential to cause stagnation and poor land management since the only use that could be made of land in Restructure Plans without consolidation would be uses in the table to section 1 which may not lend themselves well to smaller lots.

(iv) Are appropriate exemptions provided? How should buildings and works be controlled?

This was raised as a common thread through a number of submissions. Paul and Penny Hamlett also made detailed submissions in respect of their land in Port Welshpool. They raised overarching issues about how the provisions of the Incorporated Document would operate. For example, it could inappropriately prevent *works* from being carried out on farming land unless consolidation had occurred.

They considered there should be scope to permit buildings and works for land uses other than dwellings (such as tourism uses) to be applied for without lot consolidation.

Specific exemptions apply in all versions of the Incorporated Document and they have generally been expanded in each subsequent version although they remain reasonably confined. The latest version would also exempt buildings and works permission for a 'non-habitable building' or agricultural farm building.

The Panel considers that the exemptions as drafted in version 3 are generally reasonable.

As indicated by Council, it would not be appropriate to allow more substantial applications for development for permit-required uses without requiring permission under the Restructure Overlay (in addition to any other relevant overlay). It is clear that certain buildings have the capacity to be long term structures in the landscape, with potential to affect the long term prospects of achieving planned land consolidation. If all development was exempt, the objectives of the Restructure Overlay that offer this strategic focus would not be appropriately addressed.

Council confirmed that 'works' could also be undertaken without lot consolidation since the Restructure Overlay does not seek to control works expressly (as distinct from 'buildings' or the construction of parts of buildings). The Panel considers this approach is appropriate, but this should be explicitly confirmed in the document itself.

Mr and Mrs Hamlett were also concerned that there is no definition in the planning scheme of a 'non-habitable building'. Ordinarily, whether a building is habitable is generally defined by building regulations. Council could give advice to particular applicants in respect of particular proposals to confirm how the provisions would apply to their land at the time. For example, it seems unlikely that a farm shed would be regarded as habitable for the purpose of this provision simply because it included a toilet. However, if the purpose of the shed was for some form of accommodation, it would be difficult to characterise it as 'non habitable'.

(v) Is it reasonable to prohibit all forms of accommodation on land identified as 'accommodation prohibited' lots?

The exhibited Amendment identified certain smaller (generally vegetated) Crown land lots as lots where no dwellings could be constructed.

In version 3 of the Amendment, Council proposed a further unilateral change to prevent the use of this land for any form of accommodation (a term described in the planning scheme), referred to as Type B, 'Accommodation prohibited' lots. Such use would become prohibited, regardless of the current zone controls because the table of uses in the zone would be altered for such land. Many of these land parcels are within the Public Park and Recreation Zone.

The Panel directed that notice of this change be given to each relevant land manager. There was no express objection to this course of action (assuming the effect of this change was properly understood) including from DELWP, and some public authorities supported the 2019 changes to the Amendment documentation more broadly.

The Panel appreciates the challenges raised by small Crown lots that contain native vegetation, especially where they interface with 'old and inappropriate' private subdivisions. For reasons outlined above, in addition to concerns about the ecological values of native vegetation or potentially heightened fire risk, the Panel supports the originally exhibited proposal to prevent their use for dwellings.

However, the Panel does not support the broader prohibition on any form of accommodation. It considers that this would unduly restrict land of this type, which may retain some potential for sensitively designed and managed accommodation uses by or on behalf of the land manager, subject to being able to manage environmental hazards appropriately.

(vi) How valid is the proposed approach to disused road reserves? How will this interact with other processes for road closure?

Amended policy at Clause 21.09-1 proposes a Strategy to "*formally close unused road reserves within the Shire that are no longer required to provide access, and facilitate their consolidation into adjoining properties, particularly where located in old and inappropriate subdivisions*".

Council advised that its discussions with DELWP indicated that it would be generally preferable for road closures to be pursued using processes under the *Local Government Act 1989*, rather than though the Road Closure Overlay in the planning scheme. This has informed Council's approach to the Amendment.

The Panel agrees that there is no impetus for the Amendment to address all requests for road closures from submitters, and it would not be reasonable to make substantial changes to some roadways and not others within the scope of this Amendment. This can be pursued under the *Local Government Act 1989* as needed.

Various versions of the Incorporated Document sought to refine the way disused road reserves are dealt with under the Restructure Overlay provisions.

A change the Panel regards as significant was made in version 3, to include specific disused road reserves within the accompanying *mapping* of specific Restructure Lots. This would appear to mean that all parts of the identified road reserves would need to be included in each Restructure Lot, which is a more restrictive requirement than provided in the original Restructure Plans.

Concurrently though, that version of the document also proposes express scope for variation within each Restructure Plan in respect of these roadways, subject to agreement of the relevant (road) authority and adjacent landowners.

Despite its best efforts to direct detailed notice and to disclose its questions of Council in the process, the Panel is not satisfied that stakeholders are explicitly aware of these changes or their full effect.

Therefore, it considers that the fair way to proceed is on the basis of the mapped Restructure Plans *as exhibited*, subject to making further corrections that would not affect stakeholders negatively, such as to remove land from the Restructure Overlay where it has already been consolidated to the satisfaction of Council. This would also involve removing the new proposal to require identified road reserves to be consolidated into Restructure Lots in a particular way.

Nevertheless, in principle, the Panel endorses Council's intention to provide flexibility for how disused road reserves should be incorporated into adjoining land, since it is unclear at this stage how this might eventuate between the relevant authority (although commonly Council) and adjacent landowners. Otherwise, this may become a practical obstacle to consolidation that is outside the reasonable control of an applicant using its best endeavours. The approach taken in version 2 is more suitable.

However, the Panel considers that this feature already substantially exists in Clause 45.05-1 of the Restructure Overlay which provides an exemption from the need for a subdivision to be in accordance with a restructure plan (so long as it is not overridden by a conflicting provision in the Incorporated Document):

> *... if the subdivision is for one of the following purposes and no additional lots or subdivision potential is created:*
> - *To realign boundaries between lots that have been consolidated in accordance with the restructure plan.*
> - *To consolidate a restructure lot with a section of closed road or other land not included in a proposed restructure lot.*

Council could obtain legal advice about whether the provisions proposed create unnecessary overlap.

(vii) Should there be inbuilt capacity for other variations from Restructure Plans subject to various consents?

In general, subdivision would need to be 'in accordance' with the Restructure Plan.

In version 2 of the Incorporated Document, however, there is capacity for Council to permit a dwelling to be constructed on consolidated land that does not strictly conform with a Restructure Lot, provided there will not be an increase in the number of dwellings allowed on all Restructure Lots within the Restructure Plan and the land is consolidated into a single lot on title.

However, a new provision in version 3 would allow subdivision that varies from the Restructure Plan boundaries where the variation is 'minor' in Council's opinion, and would not increase the number of dwelling entitlements under the Restructure Plan.

The Panel agrees with Council that it may be desirable to provide a degree of inbuilt flexibility to vary certain elements of Restructure Lots in certain circumstances, especially since any changes would conceivably require a planning scheme amendment.

However, the notion of allowing such variations where they are 'minor' or allowing more substantial variations to the Restructure Plans provided there is an element of lot consolidation is viewed by the Panel as potentially problematic.

A significant benefit of the Restructure Overlay is to provide certainty as to the future form of subdivision and potential land use. In the Panel's view, this would be eroded if individual decisions could be made to depart from the Restructure Plans that form part of the Incorporated Document, especially where there is no separate permit process as part of the Restructure Overlay itself and this process is intended to vary the provisions applying to use or subdivision of land within the underlying zone.

Therefore, the Panel considers that an appropriate balance would be struck by requiring lots to be consolidated 'generally in accordance with' the relevant Restructure Plan.

Even though the 'head' clause in the Restructure Overlay refers to 'in accordance with', this presumably can be varied for land within this particular Schedule to increase flexibility through a provision of the Incorporated Document (so long as it is listed in the Specific Sites and Exemptions provision).

The term 'generally in accordance with' is capable of interpretation in line with relevant case law principles confirmed by VCAT, for example, in the case of the approval or amendment of Development Plans under the Development Plan Overlay.[21]

Importantly, this discretion should be subject to the proviso as currently proposed, that there will not be an increase in the number of dwellings allowed on all Restructure Lots within the particular Restructure Plan, and the land to contain the new dwelling must be consolidated into one lot on title. This would ensure that the underlying objectives of the overlay and Incorporated Document would not be compromised.

(viii) Does the Incorporated Document allow for the preservation of existing use rights?

The Panel considers that it is entirely reasonable for owners or occupiers of land in the Restructure Overlay to be entitled to continue using land where existing use rights apply, even if land has not been consolidated in accordance with a Restructure Plan. This category of rights is expressly protected by the *Planning and Environment Act 1987* and enshrined in Clause 63 of the planning scheme. There is also scope for these uses to intensify within lawful parameters.

Because the Incorporated Document expressly provides that its provisions override other planning scheme provisions to the extent of any inconsistency, the Panel regards it as important to clarify that this excludes existing use rights provisions of the scheme, which are preserved and continue to operate.

As an example, the provisions of Clause 63.10 require that:

"*If at least 50 percent of the gross floor area of a building or at least 50 percent of the area of any works is damaged or destroyed so that the use cannot continue without the building or works being reconstructed, the land must be used in conformity with this scheme, unless a permit is granted to continue the use, and to construct or carry out buildings or works".*

[21] *Canet v Brimbank CC* [2003] VCAT 13

If the circumstance was to arise, as raised in Petra and Frank Miller's submission, that a dwelling on a lot included in the Restructure Overlay was damaged, it should be clear that consolidation as required by the Restructure Overlay is not necessary to enable the replacement of the dwelling. Instead, the provisions of 63.10 prevail, where a permit is required to continue the use and or to construct or carry out the buildings and works associated with the replacement building.

This is an important clarification which will provide suitable protection for existing uses in the context of the Restructure Overlay. The Panel considers that this needs to be clearly identified in the Incorporated Document.

(ix) CFA and CMA commentary

The CFA and the CMA also commented on aspects of the content and format of the document. A key issue was their desire to preserve the need for permission under overlays such as the Bushfire Management Overlay and Land Subject to Inundation Overlay once land has been consolidated.

As explained, the Amendment has involved an in principle assessment of the suitability of sites for development having regard to relevant overlay provisions. However, the strategic assessment undertaken as part of this Amendment has not (and does not claim to) descend to the level of detail required to evaluate a particular proposal in terms of siting, design and the like. This is more appropriately addressed at the planning permit stage with input from relevant authorities.

For completeness, the Panel agrees with the CFA and CMA that is vital to still confirm that the Incorporated Document does not inherently exclude the need for a planning permit for *development* under other overlay provisions even if a permit for the underlying *use* is no longer required. This is despite the Incorporated Document confirming it is intended to apply in addition to other zone and overlay provisions, because the extent of any potential inconsistency still needs to be considered otherwise the Incorporated Document will prevail.

6.3 Further commentary by the Panel about the form and content of the Incorporated Document

From the Panel's perspective, even revised versions of the document do not lend themselves to practical application without significant legal or professional interpretation.

Despite the many versions of this document, as mentioned immediately above, the detail of how the underlying zone and overlay controls would interact with its provisions is not abundantly clear.

Potentially, a fact sheet including a flowchart could be prepared to accompany this technical document for users.

Another potentially unforeseen issue is that any development on land used for a dwelling within the Restructure Overlay may no longer need approval under the provisions of the Farming Zone. In the absence of other more detailed overlay provisions, there may be no consideration of the siting, size, materials or visual impact of such structures on more sensitive land, for example, if adjacent land is located in a residential zone such as the Township Zone.

It is unclear to the Panel why, as a matter of principle, the benefits of consolidating in accordance with a Restructure Plan should necessarily extend this far.

Extensive work would be required by the Panel to fully redraft the Incorporated Document and this has not been formally requested by Council. Accordingly, the Panel has provided in-principle comments stemming from the exhibited version, with modifications from subsequent drafts suggested where appropriate.

The Panel also recommends that relevant application requirements be reinstated (deleted from version 3), to also require a response to the objectives of the Incorporated Document and purposes and decision guidelines of the Restructure Overlay. This would ensure that applicants are attuned to all the issues to be addressed by Council for applications of this type.

6.4 Conclusions

The Panel concludes:

- It is appropriate to allow the use of land consolidated in accordance with a Restructure Plan for a dwelling without requiring a planning permit for such use, subject to suggesting reconsideration of particular Restructure Lots in Chapter 7. This would achieve an acceptable balance between lot consolidation and allowing new dwellings on identified land.
- The changes proposed in version 3 of the Incorporated Document to prevent a planning permit being granted for any permit-required use (aside from a dwelling) unless land is consolidated are not supported. They would disrupt the strategic balance otherwise achieved for Restructure Lots.
- On balance, appropriate exemptions are proposed, but the document should confirm that works in the absence of the construction of buildings do not require land consolidation under the provisions of the Restructure Overlay.
- It is unreasonable to prevent all forms of accommodation on public land formerly identified as 'no dwelling development' lot in the exhibited version of the Amendment.
- Some flexibility is appropriate in terms of how disused road reserves are consolidated into adjoining Restructure Lots. The considerations in version 2 are generally sound. The updated mapping for Restructure Plans should not include these road reserves within individual lots, but should revert to formally exhibited Restructure Plans in this regard.
- It is otherwise undesirable to provide explicit opportunities to vary Restructure Plans but it is reasonable to require 'general accordance' with them, instead of 'strict accordance', as these terms are applied by the Victorian Civil and Administrative Tribunal.
- The Incorporated Document should clearly identify that it does not 'override' existing use rights associated with Clause 63 of the scheme.

6.5 Recommendations

The Panel recommends:

22. Update the exhibited version of *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire August 2017* as follows before incorporating it in the Planning Scheme as an Incorporated Document:

- **a) clarify the ongoing operation of the requirements of relevant overlay controls and the underlying zone to obtain a planning permit for the construction of a building or carrying out of works, even after the consolidation of land in accordance with the Restructure Overlay.**
- **b) ensure that existing uses referred to in Clause 63 of the Planning Scheme are preserved by the Incorporated Document.**
- **c) update the list of exemptions for structures (buildings) as proposed in version 3 and confirm that works may be carried out without prior lot consolidation.**
- **d) consider whether the provisions of the Restructure Overlay provide sufficient flexibility in respect of roadways adjacent to Restructure Lots, or whether the model proposed in version 2 should be progressed if required.**
- **e) provide a degree of flexibility to modify the layout of Restructure Lots generally as proposed in version 2 but adopting the terminology "generally in accordance with".**
- **f) Reinstate previous application requirements from version 2 as relevant to require a response to the objectives of the Incorporated Document and the purposes and decision guidelines of the Restructure Overlay.**

7 Restructure Plans

7.1 General approach to Restructure Plans

(i) Council rationale

In summary, key considerations influencing Council's configuration of the Restructure Plans included the purpose of the zone, the location of the land relative to township boundaries, the pattern of lot ownership, the extent and distribution of existing dwellings, the proximity to established agricultural operations and environmental considerations.

In its response to Panel Directions, Council confirmed that:

> *Of the 125 proposed RO lots, there are currently 69 lots with existing dwellings and 15 RO lots where no dwelling will be permitted.*

Council explained that it had sought to require the consolidation of lots within the same ownership for individual Restructure Lots where possible. Therefore, the majority of Restructure Lots proposed for the Shire as a whole seek consolidation of land owned by a single landowner or related landowner, as identified by Council's rates records. The Panel had the benefit of up-to-date layered Council mapping at the Hearing to understand these relationships.

Where this was not possible, Council explained that it carefully considered the subdivision pattern and development potential of Restructure Lots, especially where there was already an existing dwelling on one of the current lots in different ownership, since this may remove the opportunity for an adjacent landowner within the same Restructure Lot to seek permission to use or develop their land for a dwelling.

A number of submitters affected by Restructure Lots with multiple owners considered that this arrangement was either unfair or unworkable. They also submitted that this may act as a disincentive for appropriate land management and that the development potential of their lots would be reduced.

(ii) Panel response

Any planning scheme Amendment that may affect a person's entitlement to use or develop their land will be contentious in some respects, since it will have real life consequences for those land owners.

From the outset, the Panel appreciates the significant concerns of landowners who may have had an expectation that they could develop a dwelling on their property. In many instances moving forward, this may not be possible as an outcome of the Restructure Plans, such as if there is an existing dwelling within the nominated Restructure Lot or unless land is agglomerated.

However, given the planning scheme as it stands, an owner of land in the Farming Zone less than 40 hectares in area cannot reasonably expect that the land can automatically be developed for a dwelling. A dwelling on farmland less than 40 hectares requires a planning permit and needs to meet the strict criteria of the Farming Zone provisions and to be aligned

with State planning policy. Assessed properly, there are limited opportunities for new dwellings on farmland where they are not directly required to support agricultural enterprises.

While the Panel is cognisant of these expectations and is aware of the potential implications for landowners, it is required to consider the concerns raised in submissions on the basis of current planning policy and controls as well as environmental constraints and the current state of knowledge.

There will no doubt be positive and negative economic consequences of the Restructure Plans. Likewise, the Restructure Plans have the potential to affect land values.

All strategic planning decisions have the capacity to affect land values, for better or for worse. At the stage they are made, these values are rarely able to be captured accurately. In any case, an amendment such as this needs to focus principally on appropriate land use and development outcomes for the future of settlements municipal-wide. The impact on personal property values is clearly an issue of concern to submitters, but is not considered a factor of sufficient relevance or certainty in the strategic planning process to weigh against appropriate strategic planning outcomes for this Amendment.

The Panel therefore supports Council's work to provide improved land holding and land use and development outcomes moving forward for subdivisions across the Shire considered by it to be 'old and inappropriate'.

For example, many individual lots proposed within the Restructure Overlay were clearly confirmed by the Panel as inappropriate given their site location and site conditions. This includes small lots on substantially undulating high quality farmland that would be obviously unsuitable for a high concentration of dwellings. It also includes dense 'settlements' that were established 'on paper' but did not eventuate or have diminished over time.

At the same time, the Panel accepts that there are some exceptions to where a subdivision may be regarded as 'old' and that some restructure lots may not readily be perceived by their owners as 'inappropriate'. The concept of whether current landholding is 'inappropriate' may be influenced by a number of factors, including the owners' perception of whether it is appropriate for land in the FZ to function in effect as rural residential land.

Overall, bearing in mind the underlying strategic impetus for the Amendment (however worded) the Panel confirms its position that the land within the settlements identified by Council are suitable candidates for the Restructure Overlay.

For the most part, the Panel also supports the approach taken by Council to formulating the Restructure Plans, especially in terms of the number and size of lots to be created and the overarching considerations it has taken into account.

History has demonstrated that the effective achievement of restructure objectives will commonly depend on a number of public and private factors, with the planning scheme only being able to go so far.

Ownership patterns are highly relevant to the Restructure Plans and their workability. Council has been keenly attuned to the pattern of ownership when identifying boundaries and sizes of proposed Restructure Lots. The majority of agglomerated Restructure Lots represent individual parcels in common ownership. At the same time, there are a significant number

which are held in separate ownership, especially in Toora and to some extent in Port Welshpool, for example.

The Panel acknowledges that the achievement of the consolidation sought by the Restructure Plan is likely to be less controversial (but still potentially challenging) where the lots are in common ownership. However, this is not always possible and the scenario where lots within a Restructure Plan are in different ownership - sometimes up to five owners, but more commonly two or three - has generated more detailed submissions opposing the Amendment.

In some instances, where there is an existing dwelling on the Restructure Lot, immediate neighbours who may have had expectations of using their land for a dwelling would no longer be entitled to make such application to Council as a direct outcome of this Amendment. In other cases, neighbours or family members may need to negotiate between themselves to determine who could achieve lot consolidation required to support a new dwelling.

The Panel acknowledges that this generates a real challenge for the future of these lots, since land owners will need to negotiate and one or more may need to sell their interest to enable a single dwelling to be constructed on the consolidated parcel. This is arguably one of the greatest practical obstacles to achieving relevant Restructure Plans, in addition to when lots contain an existing dwelling and there is no imperative to consolidate titles to that land.

Another obstacle is where lots contain an existing dwelling and there is no imperative to consolidate titles for that land. This is especially the case if there is no perceived advantage to land owners by lot consolidation, where existing conditions are more likely to remain. However, this arguably carries less risk.

Despite these challenges, the Panel considers they are not insurmountable. Commercial and personal factors will emerge over time that will lead to a practical resolution of the issue of disparate ownership or multiple titles, although this may take decades. This has already occurred successfully in both Venus Bay and other South Gippsland Shire settlements and in other municipalities.

The Panel considers the appropriateness of the Restructure Plans in more detail in the following sub-chapters.

7.2 Introduction to Panel's approach

A significant number of submissions requested changes to the Restructure Plans proposed to be included in the Restructure Overlay Schedule and to form part of the Incorporated Document.

The majority of submissions sought changes to the configuration of the Restructure Lots, in most instances, with a view to increasing the number of lots and/or dwellings that could be constructed upon implementation of the Restructure Plans. In some instances, submissions by neighbours opposed the additional lots and dwellings sought.

In coming to its conclusions about the various submissions where additional lots or dwellings were sought, the Panel took into account a diverse range of matters specific to each site and setting, including:

- the zoning of the land
- planning policy

- the purpose of the Farming Zone and opportunities for a 'viable' parcel of farmland
- environmental constraints of the land, especially where affected by environmental overlays
- land size and lot configuration
- land ownership and equity
- the proposed Framework Plans
- the extent and location of existing dwellings and other development in the relevant area
- adjoining land use (current or potential) and its potential to impact on agricultural enterprises
- proximity of land to community services and facilities
- the availability of servicing and infrastructure
- the potential for net community benefit generated by the resultant consolidation.

(i) Panel commentary on CFA's position

A relatively high proportion of sites proposed for inclusion in Restructure Plans is covered by the Bushfire Management Overlay. More broadly, even for land outside the Bushfire Management Overlay, the need to reduce bushfire risk to an acceptable level in line with Clause 13.02-1S is a key influence on this Amendment.

Relevant strategies in that clause pertain to bushfire hazard identification and assessment and include:

> *Ensuring that strategic planning documents, planning scheme amendments, planning permit applications and development plan approvals properly assess bushfire risk and include appropriate bushfire protection measures.*

Bushfire risk was a key consideration for Council when formulating the proposed Restructure Plans. One element was to identify predominantly vegetated Crown Land as 'no dwelling development' lots.

The Panel acknowledges the CFA's assessment that the Amendment *as a whole* is unlikely to increase the risk associated with bushfire. In some ways, the Panel agrees, since a large number of lots would no longer be candidates for residential development as a result of the consolidation requirements.

To some extent, this is a moot point though since there is no current *entitlement* for these sites to be developed with dwellings or other forms of accommodation unless justified in the Farming Zone or Rural Activity Zone or similar. Rather, a planning permit could be applied for and this would be subject to the exercise of discretion which would include an assessment of bushfire risk at a site and landscape level.

Therefore, in practice, the effect of the Amendment would be to vastly reduce the number of lots in respect of which a planning permit application for a dwelling could be made.

This is still advantageous from a strategic planning perspective, since it demonstrates compliance with policy to consider bushfire risk in all stages of the planning process and would have the potential to reduce the vulnerability of particular communities to bushfire.

Significantly, the Panel relies on the CFA's specific assessment of all sites within proposed Restructure Lots that could sustain a new dwelling as likely to be able to meet current building siting, construction and vegetation management standards for such use and development. This is an important component of strategy stemming from bushfire policy.

The CFA's confirmation that the Restructure Lots would direct population growth and development to generally low risk locations with suitable access is another important response to policy.

The Panel accepts that the Amendment is not definitive about acceptable bushfire outcomes. It would work together with the conventional controls in the planning scheme to enable bushfire risk to be fully assessed and appropriate bushfire protection measures to be implemented.

This process would enable a fulsome assessment of each individual site, its landscape setting and the particular proposal to ensure that it responds suitably to bushfire risk.

(ii) Panel commentary on CMA's approach

Many sites within the proposed Restructure Overlay are identified within the Land Subject to Inundation Overlay either in whole or in part. This has been another factor influencing Council directly in its designation of Restructure Lots and their capacity for residential development.

Floodplain management is addressed in state planning policy at Clause 13.03-1S and includes assisting the protection of life, property and community infrastructure from flood hazard, as well as the flood storage function of floodplains and waterways. Relevant strategies include to "*avoid intensifying the impact of flooding through inappropriately located use and development*".

The Panel acknowledges the more detailed work undertaken by the CMA before the Hearing to identify which Restructure Lots could safely be developed with a dwelling and which conditions would apply. It substantially defers to its expertise and has considered its position in respect of each Restructure Lot, with relevant commentary in respect of individual Restructure Plans below.

The Panel has considered whether it would be appropriate to include specific flood related conditions for the use of land as a dwelling in the Incorporated Document pertaining to each Restructure Lot. It has formed the view that this is not necessary, although it was reasonable for the CMA to 'flag' its position for land owners upfront.

As explained, the strategic process underpinning this Amendment involved an in-principle assessment of whether Restructure Lots have been appropriately configured to enable lots identified for a potential dwelling to manage the risk of natural hazards such as flooding.

So long as the Incorporated Document does not exempt the need for a planning permit for development under the Land Subject to Inundation Overlay (or other relevant overlays), the Panel considers that detailed issues of siting and design are best addressed through the planning permit process for a particular proposal.

Although some submitters suggested that flood hazards could be suitably addressed at a subsequent permit stage, this was not demonstrated with any specificity or with the benefit

of evidence sufficient to displace the CMA's advice. This included the settlement of Port Welshpool where the CMA considered that a high number of proposed Restructure Lots could not safely contain a new dwelling.

In the Panel's view, planning policy supports the identification of land within the scope of the Amendment that should not be developed for a dwelling given its inherent risk from natural hazards. This Amendment appropriately seeks to provide this direction upfront rather than deferring to a planning permit process if relevant safety thresholds cannot be met.

Like the Bushfire Management Overlay, the Land Subject to Inundation Overlay imposes particular assessment requirements when a permit application is made. This would be the time when the detailed siting, design and mitigation measures associated with a potential dwelling would be evaluated by Council with the CMA as a recommending referral authority. However, the Panel considers it is reasonable to only allow such applications to be made in the context of the Restructure Overlay where the consolidated site can in principle address flood risk subject to siting, design and mitigation measures.

Safe and appropriate ongoing access to settlements in South Gippsland Shire is an important interrelated issue. While it has some bearing on this Amendment, the main focus of the Amendment is on the capacity of identified Restructure Lots to contain a potential future dwelling.

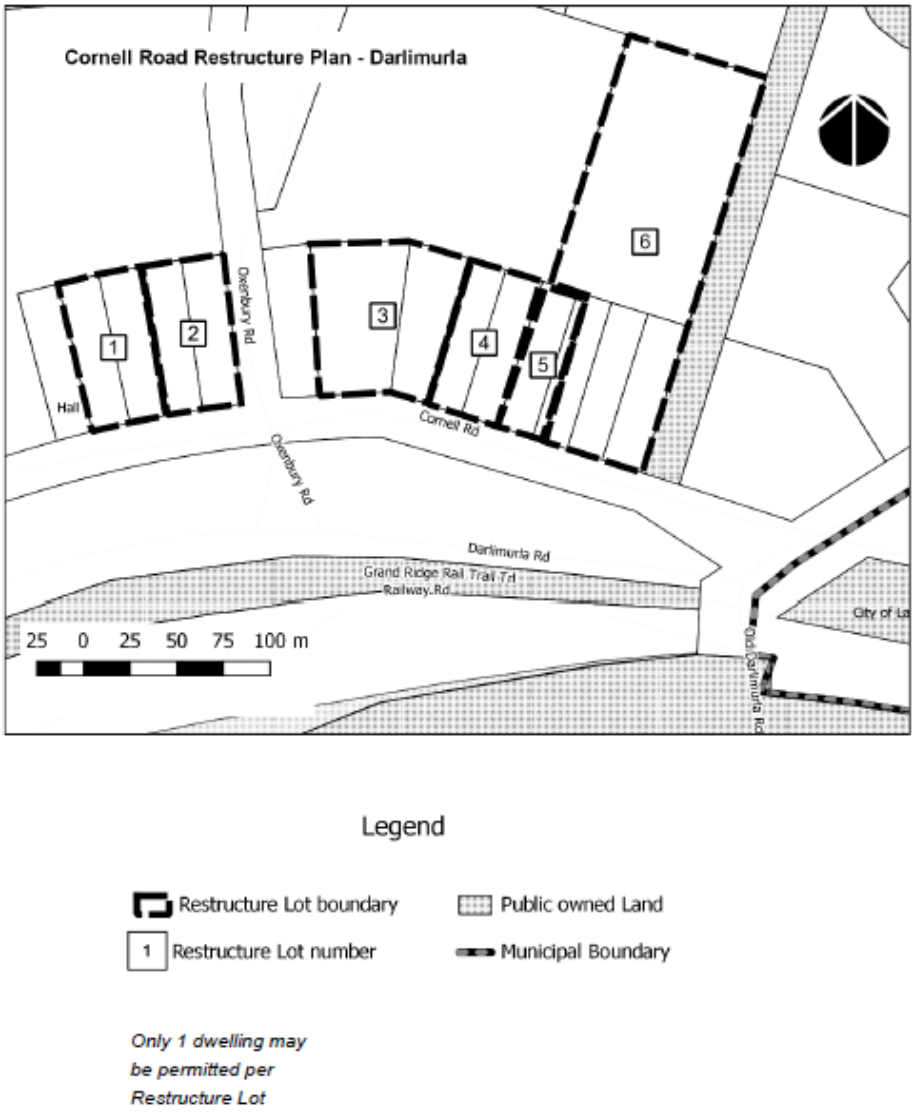
Exploring options for safe access to the full range of coastal settlements within the Shire will require substantial additional work. It may also include consideration of potential mitigation works, as considered by Council, such as the installation or maintenance of sea walls. These issues are likely to require holistic solutions that are generally beyond the scope of the current Amendment and are best dealt with via a future Coastal Strategy as proposed. That said, the Panel supports changes to the Restructure Plans to provide future provision for such access, as proposed in the post-Hearing version (Document 18B).

7.3 Darlimurla – Cornell Road

(i) Background

Darlimurla is a small settlement north of Mirboo. The Restructure Plan (Figure 17) proposes six Restructure Lots and the land is in the Rural Activity Zone, covered by Environmental Significance Overlay Schedule 5 (Areas susceptible to erosion) and the Bushfire Management Overlay.

Figure 10 Cornell Road Restructure Plan - Darlimurla



Cornell Road Restructure Area - 13 land parcels and 4.64ha area approximately

(ii) The issues

Key issues relate to the alignment of the boundary for one of the Restructure Lots and potential bushfire concerns raised by the CFA.

(iii) Submissions

Council advised that Restructure Lots 1-4 each have an existing dwelling and are in single ownership. These are non-controversial.

Individual submitters

Mary and Harvey Beruldsen requested the inclusion of an unused road reserve in proposed Restructure Lot 6. This lot currently contains a dwelling and horse paddock.

Council advised that the unused road reserve is a Crown land asset. It received informal advice from DELWP that it may be willing to dispose of this reserve through a future statutory process.

Council proposes to refer the road closure request to DELWP separate from this Amendment. It advised there are a number of options for consolidating this road reserve if this process eventuated, which may involve land owned by these submitters to the east (outside the Restructure Overlay).

Council also noted these submitters own additional land originally proposed for inclusion in proposed Restructure Lot 5 but they did not make submissions in respect of that lot. That land was included because there was speculation by Council whether the existing dwelling had been constructed across the boundary of the two Restructure Lots. Council subsequently confirmed that the existing dwelling is within that property boundary.

To address this, Council proposes to delete Restructure Lot 5, to renumber Restructure Lot 6 to Lot 5 and realign its south-west boundary to match the title boundary. These changes were included in the amended Incorporated Document which was the subject of targeted notification in 2019.

CFA

Originally, the CFA recommended that Council revise the Amendment in light of revised bushfire policy in Clause 13.02 to enable direct consideration of the broader landscape risk associated with Darlimurla.

However, its further work in the lead up to the Panel Hearing demonstrated that each proposed Restructure Lot has appropriately responded to updated policy; with each lot either outside the Bushfire Management Overlay, capable of providing appropriate setbacks and defendable space, containing an existing dwelling or identified as a "No dwelling development lot".

(iv) Discussion

The Panel supports Council's observation that there is no automatic requirement for the submitters to consolidate any or all of their land within the Restructure Overlay. The requirement would only be triggered if they propose to use or develop their land for certain purposes, such as dwelling. This would be controlled most directly by the provisions of the Incorporated Document as discussed in Chapter 6.

The Panel considers that suitable justification has been provided for the post-exhibition changes to reflect existing conditions of the submitters' landholding and this is not expected to have broader consequences for the development of this settlement.

The Panel acknowledges the further work of the CFA and finds that bushfire issues have been considered in principle for the proposed future of this settlement. Importantly, issues of siting, design and bushfire management will still need to be evaluated in detail at the stage any buildings and works are proposed where the Bushfire Management Overlay applies.

The Panel accepts that it may be appropriate for Council to refer the request for road closure to DELWP outside the confines of this Amendment. If the road reserve was closed, there is

scope within the provisions of the Restructure Overlay to agglomerate all or part of that land into a Restructure Lot subject to Council's discretion when a permit application for consolidation was made (so long as suitable flexibility was provided in the Incorporated Document as discussed above).

(v) Conclusions

The Panel concludes:

- Council's approach to Restructure Lots in Darlimurla is generally sound.
- More specifically, Council's proposed amendments to the Restructure Lots in Darlimurla post exhibition are appropriate.

(vi) Recommendation

23. For Figure 17, Darlimurla, delete exhibited Restructure Lot 5 and renumber exhibited Restructure Lot 6 as Restructure Lot 5 and realign its south west boundary to match the title boundary as shown in the amended Incorporated Document (Document 18B).

7.4 Hedley - Salmon Road

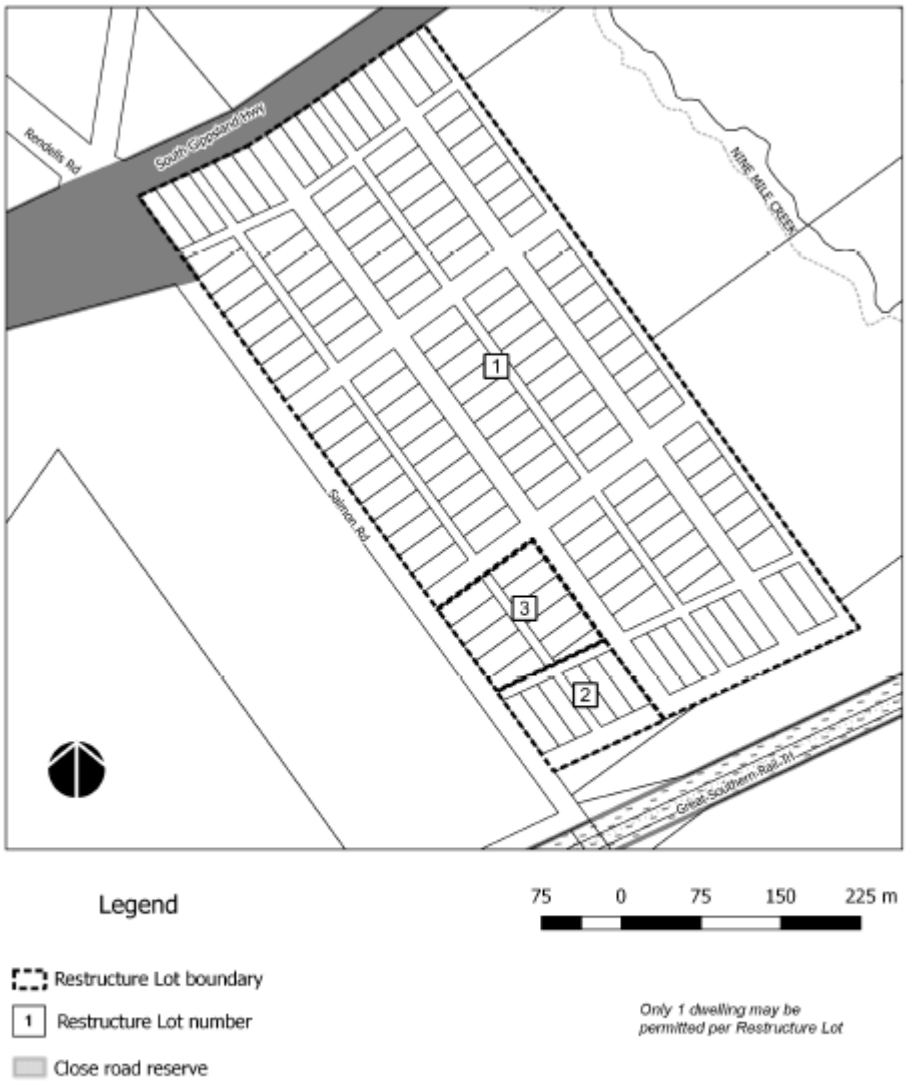
(i) Background

This subdivision consists of a large number of small lots, laid out in a regular subdivision pattern with substantial proposed road networks. The land currently presents as rural land used for dairy farming.

As exhibited, the Restructure Plan (Figure 14) proposes to create two smaller lots of 1.2 hectares and 1.1 hectares, respectively, with a balance lot of approximately 18.8 hectares.

The land is within the Farming Zone, subject to Environmental Significance Overlay Schedule 5 (Areas Susceptible to Erosion), Significant Landscape Overlay Schedule 3 and the Bushfire Management Overlay.

Figure 11 Salmon Road Restructure Plan – Hedley (Figure 14)



Salmon Road Restructure Plan contains approximately 147 land parcels in an area of 21ha

(ii) The issue

The key issue relates to whether the Restructure Overlay needs to be applied to the land if a permit for subdivision issues prior to the adoption of the Amendment.

(iii) Submissions

Two submissions were received from the current owners or vendors and the purchasers or lessees of this land but they did not oppose the proposed Restructure Lots.

Council advised that planning permit 2018/216 had been issued for a two lot subdivision and removal of easements. It confirmed that the whole site could be excluded from the Restructure Overlay if consolidated in accordance with the permit before adoption of the Amendment.

The Great Southern Rail Trail Committee of Management also provided a submission supporting the amendment in relation to Hedley.

(iv) Discussion

The Panel had some preliminary concerns about the exhibited Restructure Plan which would allow up to three new dwellings (with two lots of approximately 1 hectare each and one balance lot), notwithstanding the small existing cluster of dwellings to the west and north of the property. This did not appear to align well with policy and zone objectives to protect viable farmland and to prevent the proliferation of dwellings.

This land currently operates as a consolidated dairy farm and has an area of approximately 20 hectares. The Panel considers that the amended Restructure Plan (Document 18B), which requires the entire site to be consolidated before a dwelling would be permitted without a permit, is a more suitable outcome for this land in its setting. This still provides a genuine incentive to achieve consolidation of a substantial number of small and inappropriate lots since the land is less than the 40 hectare area required for the use of land as a dwelling without a permit. The land will be of a suitable size for small scale agriculture (or use in connection with surrounding land) if this was proposed to continue in addition to the future residential use of the land.

No specific issues were raised by the CFA. The site is cleared pasture land and the recent grant of a permit demonstrates an acceptable response to bushfire management.

It appears to the Panel from the plans endorsed under the recent permit for subdivision that the subdivision would substantially consolidate existing multiple lots and that the permit also extends to land within the same landholding beyond the Restructure Overlay. In principle, the Panel agrees that there would be no utility in including the land in the Restructure Overlay if consolidation of all lots and road reserves is achieved before the Amendment is adopted.[22]

(v) Conclusions

The Panel concludes:

- The amended Restructure Plan (Document 18B) is generally appropriate and preferable to the originally exhibited Restructure Plan.
- There does not appear to be a direct alignment between the two lot subdivision recently approved for part of this land and the proposed Restructure Lot. However, if the land as a whole was consolidated before adoption of the Amendment, it could be excluded from the Restructure Plan in line with the Panel's general recommendation.

(vi) Recommendation

24. For Figure 14, Hedley - Salmon Road, exclude the land in Restructure Lot 1 from the Restructure Overlay if it is consolidated before Amendment C90 is approved.

[22] Although it is unclear whether any separate Crown Allotments would remain after the subdivision, it appears that the permit requirement for a section 173 agreement preventing further subdivision would render this benign in terms of the potential for new dwellings.

Alternatively, if consolidation does not occur before Amendment C90 is approved, include Figure 14 as shown on the amended Restructure Plan in the Incorporated Document (Document 18B).

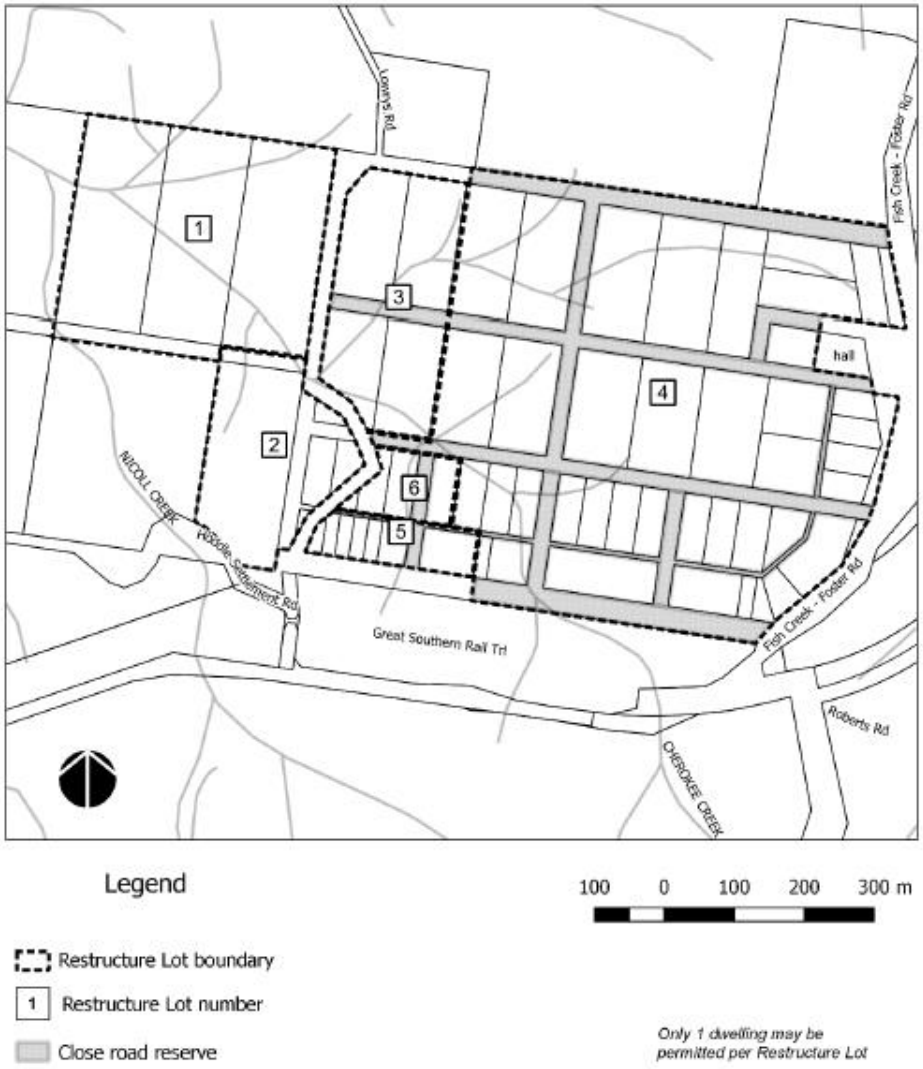
7.5 Hoddle - Lowrys Road

(i) Background

Figure 11 of the Restructure Plans pertains to Lowrys Road properties. It proposes six Restructure Lots with a variety of lot sizes, with a substantial consolidated lot west of Fish Creek-Foster Road, with the existing hall 'carved out' from the Restructure Overlay.

The land is included in the Farming Zone and is subject to Environmental Significance Overlay Schedule 5 (Areas Susceptible to Erosion) and Significant Landscape Overlay Schedule 3.

Figure 12 Lowrys Road Restructure Plan – Hoddle



Lowrys Road Restructure Plan contains approximately 70 land parcels within an area of 63ha approximately

(ii) The issues

Key issues relate to the proposed number of Restructure Lots and their configuration and location.

(iii) Submissions

Graeme and Gillian Nicoll own land comprising 54 individual lots and they lease unmade roads and part of the adjacent Rail Trail. In their written submission to Council, they sought an increase in the number of Restructure Lots from three lots (1.6, 1.3 and 34 hectares) to five evenly sized lots of approximately 7 hectares.

At the Hearing, they proposed four smaller lots of approximately one hectare each along the Rail Trail boundary to the south, with a balance lot of 33 hectares to buffer agriculture to the north, but suggested that multiple options could be explored.[23] For example, they suggested that there was demand for hobby farms.

Mr and Mrs Nicoll submitted that their family has been engaged in farming long term and are dedicated land managers. They explained how they felt "gazumped" by significant development around them in recent years and they now question the long term viability of farming this land as a parcel on its own. They considered the proposed Restructure Lots to be inequitable since it was disproportionate for 54 lots to be required to convert to three.

Council did not support this proposed change since it considered that this would create the impression of a Rural Living Zone that would not achieve a level of development consistent with planning policy for the Farming Zone. In particular, it would likely remove the entire property from commercial agriculture and result in a cluster of rural dwellings.

Mr and Mrs Nicoll responded that although they recognised that this is a "somewhat challenging site", they considered that the area represented a de facto Rural Living Zone already and that this would increase with the advent of this Amendment. They also explained the difficulties of farming in a fragmented landscape and conflicts with residential land use. They considered their land was a suitable candidate for promoting and encouraging tourism use and development in association with the Rail Trail, consistent with Clause 21.08-4 of the planning scheme.

Lyn and Neil Loader own a rural parcel of land comprising 5.8 hectares that has been nominated for a single dwelling if consolidated. They also own a rural residential property nearby outside the Restructure Overlay area. They submitted that an additional dwelling opportunity should be provided by creating two Restructure Lots of approximately 3.2 and 2.6 hectares each. These submitters also sought to remove potential access along an unused road reserve that separates their landholding but would potentially provide access to their neighbours' property.

The creation of two Restructure Lots was not supported by Council since it would create an additional dwelling opportunity that was not considered consistent with policy or the Farming Zone.

[23] They also discussed options for access by opening an unmade road, as opposed to access from Lowrys Road.

Council observed that the Amendment neither starts a road opening process nor recommends its formal closure (noting that the Restructure Plan did not originally identify the western section of this road for closure so potential access could be provided to the east). It advised that VicRoads provided informal comment that it would not support access for the neighbouring lot via Fish Creek-Foster Road on safety grounds.

(iv) Discussion

The Panel was advised that Lot 1 (11.3 hectares) is in common ownership with another nearby property outside the Restructure Overlay with the property that is outside the Restructure Overlay already containing a dwelling. In these circumstances, the Panel queries why the Restructure Plan proposes to allow this site to be used for a (second) dwelling as of right. A vinculum notation or similar could otherwise be provided to link these two lots.

The Panel recognises the concerns of the Nicoll family that their land does not provide viable agricultural opportunities in the absence of integrated farming practices with other land in the area. This is a common concern expressed by other submitters who undertake traditional forms of agriculture on similar sized landholdings.

However, when considering policies of the planning scheme and the purpose of the Farming Zone, the Panel forms the view that the challenge identified above does not automatically justify the more intensive, regular development of this land for rural dwellings. Neither does it automatically justify consolidation in a form that would remove the potential of the entire landholding to be used for some form of agriculture.

These lots are currently under pasture, are used by a nearby commercial farm and are affected by waterways. The Panel would prefer two additional dwelling opportunities for this land overall especially in this rural setting that is not currently a residential enclave.

In the Panel's opinion, an outcome that would be more consistent with planning policy and the existing pattern of development would be to consolidate proposed Restructure Lots 5 and 6 into an agglomerated parcel of 2.9 hectares. This lot layout would suitably retain a substantial balance lot of approximately 35 hectares to the east (Restructure Lot 4) that could potentially be used for some form of agriculture or compatible land use even if a dwelling was developed.

However, this is more restrictive than Council has proposed in the exhibited Amendment. If this option was to be progressed, further notification and an opportunity to respond should be provided.

The Panel does not support the proposal by Lyn and Neil Loader for an additional dwelling opportunity for the reasons outlined by Council. It also accepts Council's position that it is appropriate for the road reserve adjacent to the Loader property to be excluded from nominated outcomes in the Restructure Plan. There are a number of future options that could be explored for the future of this land outside the scope of this Amendment.

(v) Conclusions

The Panel concludes:

- The proposal to create additional Restructure Lots comprising the Nicoll and Loader landholdings is not supported.
- It is preferable to consolidate Restructure Lots 5 and 6 into a single dwelling opportunity. Council should give this further consideration subject to requirements for further notice.
- It does not support the inclusion of the road reserve adjacent to the Loader property in the Restructure Plans.

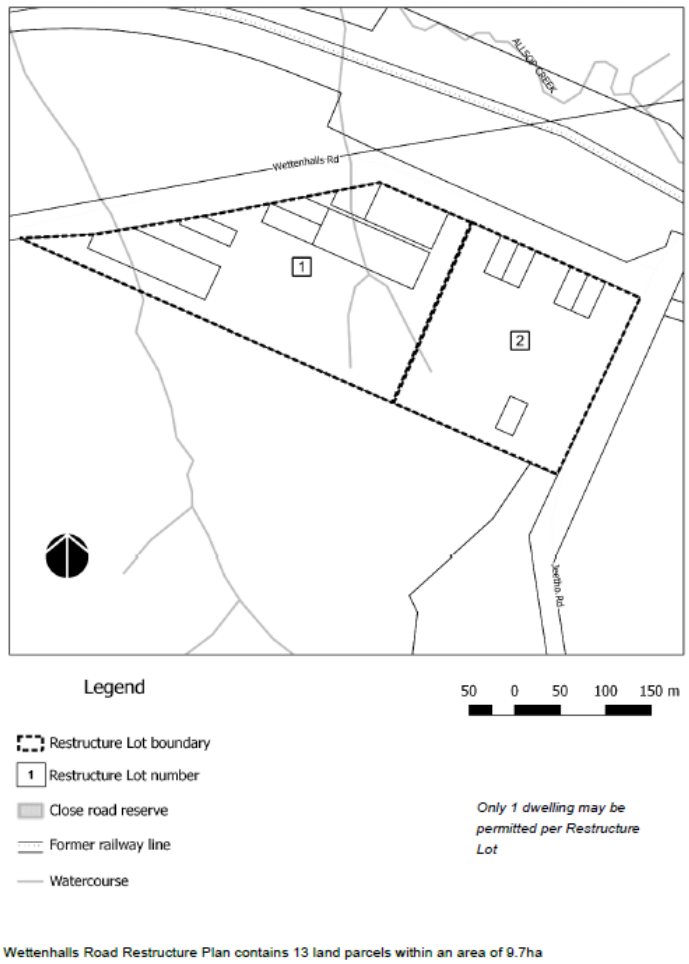
7.6 Jeetho - Wettenhalls Road

(i) Background

Jeetho is a former railway township from the 1880's and once hosted the Shire offices.

Two Restructure Lots are proposed (Figure 4), each to contain a single dwelling. The consolidated lots would be 5.7 and 4.5 hectares respectively. The land is included in the Farming Zone and is covered by the Environmental Significance Overlay Schedule 5 (Areas Susceptible to Erosion) and Environmental Significance Overlay Schedule 9.

Figure 13 Wettenhalls Road Restructure Plan – Jeetho (Figure 4)



(ii) The issue

The key issue relates to the alignment of the common boundary between the two Restructure Lots.

(iii) Submissions

Two submissions were made in respect of the proposed Restructure Lots seeking a minor adjustment to the location of the boundary to enable the continued use of existing gates and vehicle crossovers.

Council accepted that this is a reasonable outcome that would result in relatively minor variation to consolidated lot sizes. This changed boundary alignment was shown in the amended Incorporated Document (Document 18B).

Council explained that it had reached an understanding between landowners that would allow a total of two lots, each with potential for a dwelling. It identified the properties as close to the open space network of the Great Southern Rail Trail, having a low level of agriculture (agistment) and being close to Korumburra and the South Gippsland Highway. It considered these features would justify rural residential land use for these properties.

(iv) Discussion

With respect, although some indication of proposed opportunities may have been given by Council to individual landowners, this needs to be able to withstand strategic evaluation in the context of the objectives of the Amendment and consistency with other landholding.

The Panel does not fully appreciate why it would be appropriate to create two new dwelling opportunities for this land which appears to be in the ownership of two members of the same family and is just above 10 hectares in area. The setting is predominantly rural, comprised of larger lots with few existing dwellings, and the consolidation is of a relatively small number of lots. It suggests that Council consider consolidating Restructure Lots 1 and 2 subject to further notification and due process.

In terms of detail (if two lots remain supported by Council), the Panel accepts that the need to provide for existing structures would justify the slight shift in the location of the proposed lot boundaries.

(v) Conclusions

The Panel concludes:

- Council should reconsider the Restructure Lots for this settlement, with a view to consolidating the two proposed lots into one if they are in common ownership.
- Alternatively, Council should amend the boundaries of Restructure Lots 1 and 2 generally in accordance with the updated Restructure Plan if two Restructure Lots are supported.

(vi) Recommendation

25. For Figure 4, Jeetho – Wettenhalls Road, amend the boundaries of Restructure Lots 1 and 2 generally in accordance with the amended Restructure Plan (Document 18B), if two Restructure Lots are supported.

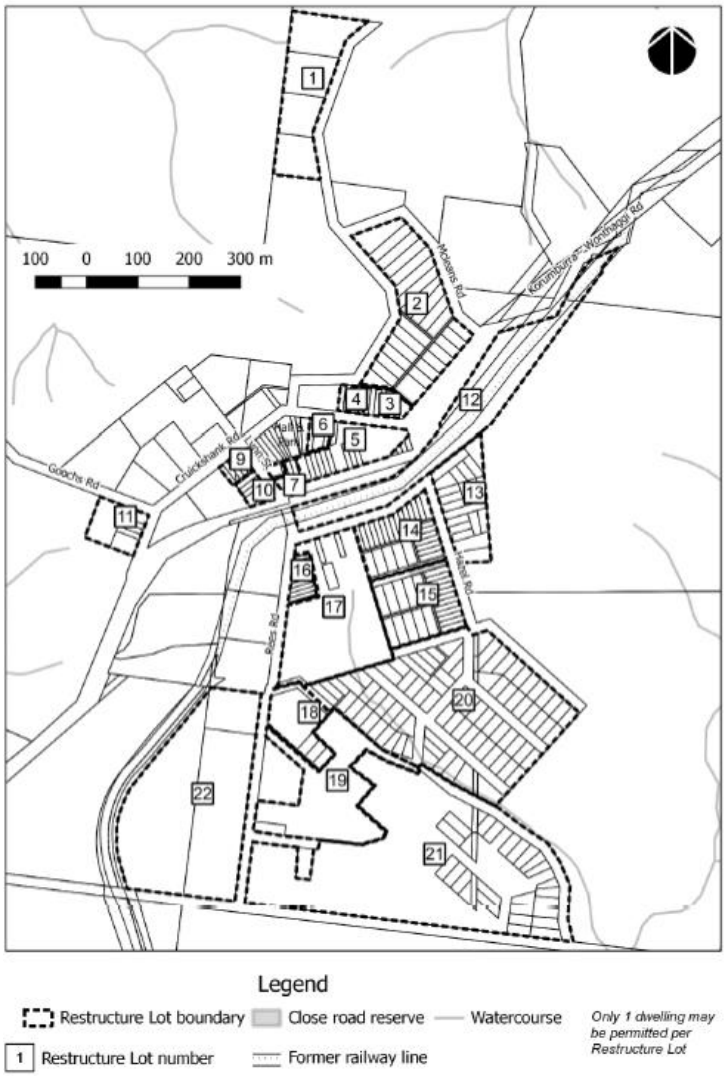
7.7 Jumbunna

(i) Background

Jumbunna contains multiple land parcels and mining reservations reflecting a historic subdivision for railway and coal mining activities. A substantial number of lots within Jumbunna were already restructured in 2004 into approximately six dwelling lots.

Land within the Restructure Plan is included in the Farming Zone and affected by Environmental Significance Overlay Schedule 5 (Areas Susceptible to Erosion) in whole or part. Some lots adjoin a Road Zone (Category 1) and others adjoin a property within Heritage Overlay Schedule 47.

Figure 14 Jumbunna Restructure Plan (Figure 7)



(ii) The issues

Key issues in Jumbunna relate to the number of Restructure Lots proposed, the configuration of some of those lots and the potential for additional dwellings to be located in the settlement as a result of the Amendment. Issues were also raised in relation to road closures.

(iii) Submissions

Four submissions objecting to the proposed Restructure Lots were received from land owners north of Korumburra-Wonthaggi Road and a further submission was received from a nearby landowner outside the Restructure Overlay area. A number of submissions were also received from landowners south of Korumburra-Wonthaggi Road in respect of proposed road closures.

Angela Child who owns land opposite proposed Restructure Lots 13, 14, 15 and 16 objected to the potential for new dwellings since they would have a negative impact on rural views, may pollute waterways and could result in land use that would conflict with agriculture.

Council submitted that the lots were appropriate since they would reduce 69 lots and multiple road reserves to three lots which would "*significantly minimise potential development effects*". It suggested that a dwelling on Lot 16 might buffer the submitter's property somewhat from nearby agricultural uses. It also identified that there is no legal right to a view and that three potential dwellings "*on the far side of a small valley [was] not considered to destroy the submitter's rural outlook*". A planning permit for a dwelling could require appropriate screening by vegetation.

Council noted that potential commercial or accommodation uses referred to by Ms Child would require a planning permit in any event, and that wastewater would be regulated for any approved development.

Arne Sorensen objected to Restructure Lots 1, 2, 3 and 4 since Taverners Road was considered unsuitable for additional traffic and that more vehicles would use Cruickshank Road and generate amenity impacts. The submitter was also concerned about setting a precedent for further residential development.

Council responded that the Restructure Plan would only allow the development of two new dwellings but would reduce the development potential of 43 lots to four dwellings overall. It also confirmed that access to the new dwellings would be from McLeans Road (subject to a developer upgrade) and the existing formed part of Taverner's Road.

In response to concerns about precedent, Council advised that the Restructure Plan was a specific control applying to 'old and inappropriate subdivisions'. Consequently, it considered that its land use and development outcomes would not set a precedent for the more generalised development of small rural lots outside the Restructure Overlay area.

Cheryl and Reginald Smith and Kerry Trewin (separately) requested road closure and acquisition of adjacent unused road reserves. Council proposed to refer this request to its assets department to start the road closure process under the *Local Government Act 1989*, although this process is separate from the current Amendment which, in the exhibited version, shows the unused road reserve divided equally between neighbouring properties. This separate process would enable issues of cost, maintenance, access and other relevant issues to be resolved at that time.

Kellie Dean and a related company requested Council to revise Restructure Lots 21 and 22 in line with planning permit 2017/273 issued on 17 January 2018 which approved a two lot subdivision of 1.6 hectares and a balance lot of 48 hectares. They also sought closure of an unused road reserve controlled by Council.

Council agreed to make consequential changes to these lots to reflect the approved subdivision and their common ownership. It also proposed to refer the road closure request to its assets department since there is no need for its use by any other land owner or land manager. Council encouraged the owners to consult with DELWP about the potential closure of a second road unused reserve running east – west at the southern end of the Rees Road unused reserve which is a Crown land asset.

Shirley Cowling requested that Restructure Lots 2 and 3 be increased to a total of four lots with access from McLeans Road comprising three lots of approximately 1.6 hectares and another of 0.6 hectares. She gave a number of reasons why this outcome would be appropriate.

Council resisted this request as it considered it would be contrary to policy and the purpose of the Farming Zone since it would result in a cluster of dwellings and an increased opportunity for land use conflict with existing farms to the east and west. It considered that financial matters are not relevant when considering planning scheme amendments and noted that a more intensive neighbouring subdivision referred to was on land in the Township Zone. It also advised that VicRoads' preliminary position did not support increased traffic on McLeans Road because of poor visibility at the nearest intersection.

(iv) Discussion

The Panel addresses the Restructure Lots in numerical order. Some of its comments pertain to Restructure Lots where no express submissions have been made but where the Panel considers that strategic planning justifies commentary.

The strategic and equitable consolidation of land is a key underlying objective of this Amendment as a whole. Therefore, the Panel considers it appropriate to ensure that the Restructure Plan as a whole is sound and aligned with planning policy and zoning provisions, bearing in mind that decisions affecting one lot may affect other lots under consideration.

The Panel originally queried why an additional dwelling opportunity is proposed for Restructure Lot 1, having an area of 2.9 hectares and involving the consolidation of four lots. It appears to adjoin land in joint ownership that already contains a dwelling. If this is the case, the land could potentially be joined to the land outside the Restructure Overlay by a vinculum notation or similar to achieve a consolidated outcome.

The land at Restructure Lot 2 contains an existing dwelling and 26 parcels and some road reserves are proposed for consolidation. It appears to be in the same ownership as proposed Restructure Lot 3 which only has an area of approximately 0.4 hectares.

The Panel acknowledges the submission by Ms Cowling requesting additional lots but considers that there is even a need to assess the validity of the proposal to create two Restructure Lots.

On balance, it supports the position of Council given the benefit of consolidation of the large number of regular sized lots and the location of the township boundary and associated Township Zone. However, it does not consider that the prevailing lot pattern and development setting could reasonably sustain any further small lots in the Farming Zone, especially those with potential for an increased number of dwellings.

Similarly, given the proposed inclusion of Restructure Lot 4 in the Township Zone, the Panel accepts that it is appropriate to create an additional dwelling opportunity if the five existing lots are consolidated.

In terms of Restructure Lot it is only 0.3 hectares in area and is near the township boundary but sits outside it. The Panel supports the new dwelling opportunity that would be created for this site since it is centrally located within an existing cluster of dwellings.

In terms of lots to the south of the South Gippsland Highway, the Council had suggested the restructure lots would represent a similar lot density for properties in Hazel Road as it achieved in restructuring land in Rees Road which it described as having a "rural living feel".

More objectively, the Panel is not persuaded that allowing a new dwelling on the former railway reserve comprising Restructure Lot 12 is appropriate. This land appears to be held in common with the adjacent Restructure Lot 13 which is currently vacant and proposed for a new dwelling opportunity.

Given the minimal number of lots comprising Restructure Lot 12, its location on the other side of the township, its irregular shape and topography, the Panel considers that the benefit to be achieved from the proposed consolidation of lots does not justify a new dwelling opportunity. Rather, the Panel recommends that Restructure Lots 12 and 13 be agglomerated, with a single dwelling opportunity created.

Similarly, the Panel recommends that Restructure Lots 14 and 15 be agglomerated, noting that they appear to be in common ownership and both used for farming. Both are small and would achieve 4 hectares if consolidated, which aligns with Council's general support for a single dwelling on lots of this size. This lot pattern would also be more consistent with that to the immediate west and reflects the increase in lot sizes to the south away from the Township Zone.

Although Restructure Lot 16 is compact and would provide a new dwelling opportunity in addition to the common landholding to the east, on balance, the Panel supports its configuration given the relatively large number of lots proposed to be consolidated and the fact that it is part of a cluster of existing dwellings along the roadway.

It was unresolved whether a dwelling already exists on Restructure Lot 20. If not, the Panel has some concern about creating an additional dwelling opportunity on this land since it remains capable of being used as part of an existing 48 hectares commercial farm. Further, this land appears to be in common ownership with other land in this settlement that would support multiple new dwelling opportunities.

The Panel was advised that lot consolidation has already occurred in line with proposed Restructure Lots 21 and 22 and that these properties could be excluded from the Restructure Overlay. This was subsequently shown on the amended Incorporated Document (Document 18B).

For completeness, the Panel would have supported the modifications proposed to Restructure Lots 21 and 22 to reflect the current planning permit for those properties. It accepts Council's submission that this compares favourably to the two similarly sized lots proposed to be created in the exhibited version of the Restructure Plan since it agglomerates land both within and outside the plan to provide for long term agricultural use. It also only creates one additional dwelling opportunity beyond existing Farming Zone provisions.

In terms of the Smiths' submission concerning proposed road closure, the Panel notes that this is a practical example of why it is important to provide flexibility for the agglomeration of road reserves into Restructure Lots. For example, it would not be material to restructure outcomes whether this road reserve was subsumed into one, other or both adjacent properties.

(v) Conclusion

The Panel concludes:

- It generally supports the Jumbunna Restructure Plan but encourages Council to reconsider:
  - whether to connect Lots 1, 11 and 20 with adjacent agricultural land in the same ownership via a vinculum or similar
  - whether to agglomerate Lots 12 and 13, and Lots 14 and 15 respectively.

(vi) Recommendation

The Panel recommends:

26. For Figure 7, Jumbunna, exclude land comprising Restructure Lots 21 and 22 from the Restructure Overlay (part 76 Rees Road, Jumbunna) as shown on the amended Incorporated Document (Document 18B).

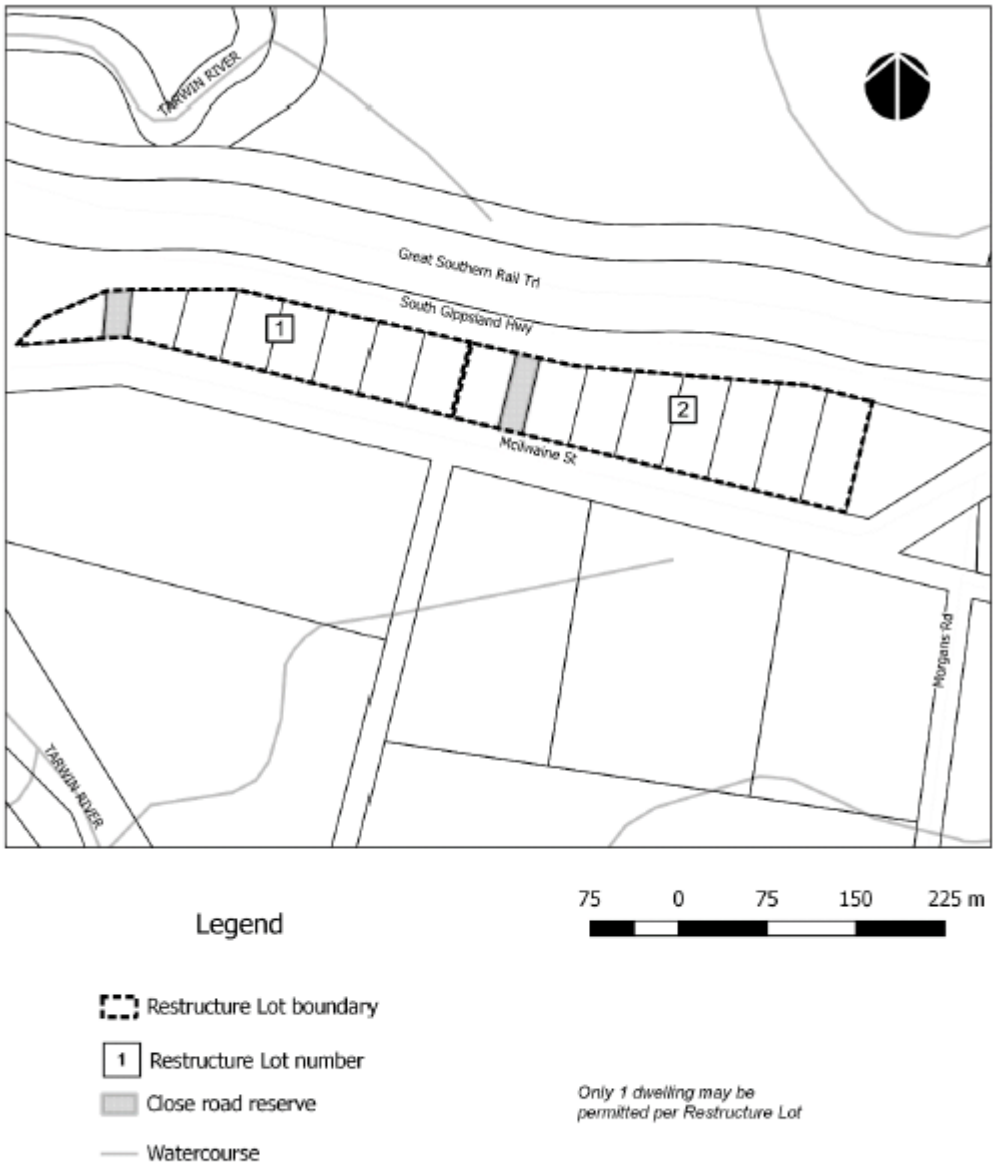
7.8 Meeniyan West – McIlwaine Street

(i) Background

Two Restructure Lots are proposed immediately south of the South Gippsland Highway.

The land is included in the Farming Zone and is subject to Environmental Significance Overlay Schedules 2 and 5.

Figure 15 McIlwaine Street Restructure Plan – Meeniyan West (Figure 9)



McIlwaine Street Restructure Plan contains 16 land parcels within an area of 4.7ha

(ii) The issue

Is the application of the Restructure Overlay necessary? How should zoning be dealt with?

(iii) Submissions

Council advised that Restructure Lot 1 already contains a rural dwelling and would involve the consolidation of 8 lots.

Stuart and Danielle Mackie objected to the application of the Restructure Plan to their land (Restructure Lot 2) which comprises eight titles and a road reserve. They submitted that their land benefits from a planning permit for a dwelling which already requires consolidation of

these parcels. They regarded the Restructure Overlay as imposing unjustified additional requirements. They also requested that their land be rezoned Rural Living Zone.

Council responded that Restructure Lot 2 has already been consolidated generally in accordance with the proposed plan, such that it could be excluded from the Restructure Overlay. This was shown on the amended Restructure Plan (Document 18B).

Council advised that it considered the potential rezoning of this land to be an issue outside the scope of the current Amendment. This could be explored as part of a suite of potential rezoning options in a future amendment to the planning scheme.

(iv) Discussion and conclusion

The Panel accepts that it is appropriate to remove proposed Restructure Lot 2 following its consolidation and the construction of a new dwelling. Restructure Lot 1 is appropriate since it reflects the existing dwelling on that land but would encourage the consolidation of the overall landholding.

(v) Recommendation

The Panel recommends:

27. For Figure 9, Meeniyan West, delete proposed Restructure Lot 2 from the Restructure Overlay (39 McIlwaine Street, Meeniyan West) as shown on the amended Incorporated Document (Document 18B).

7.9 Outtrim

(i) Background

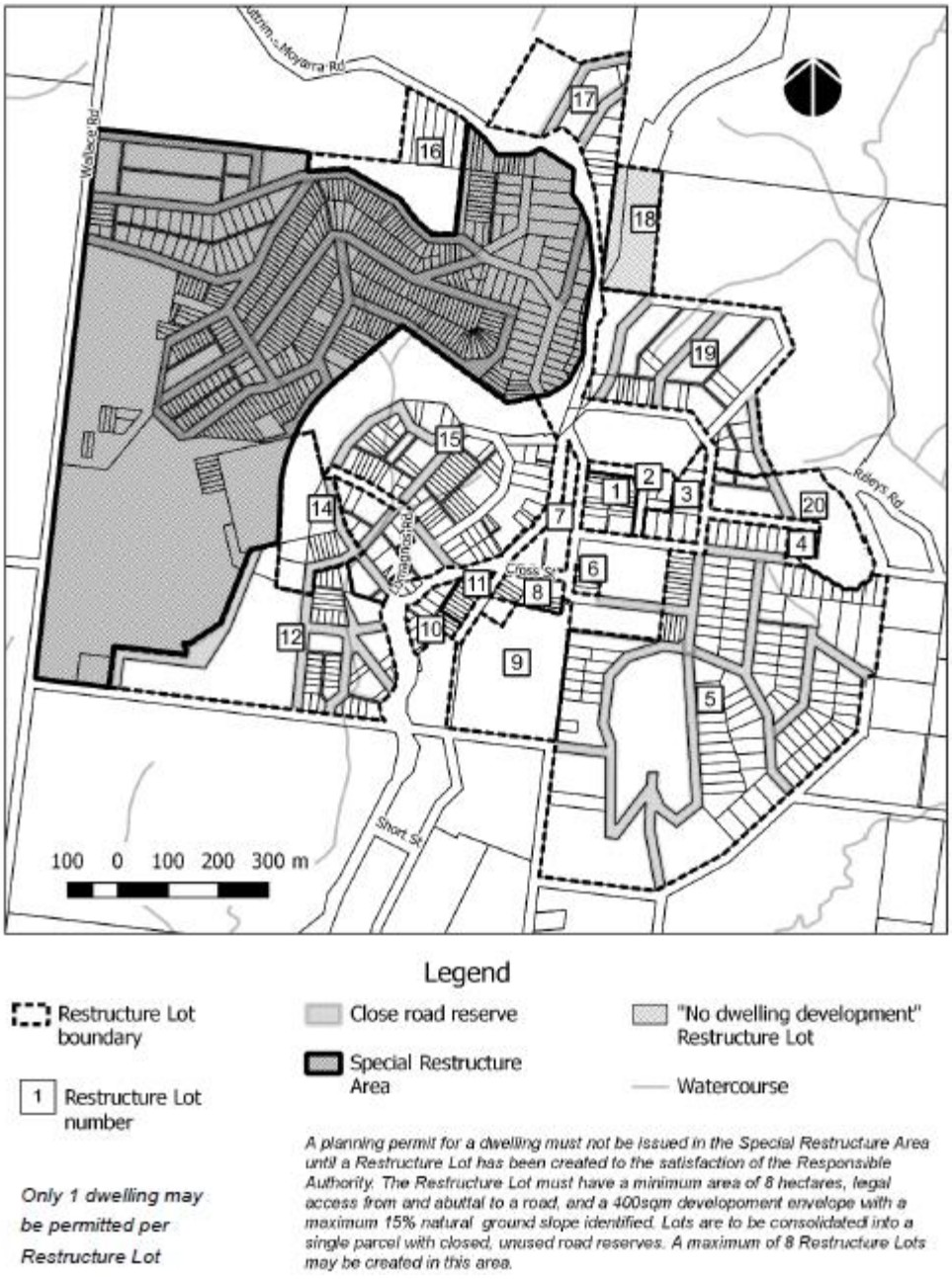
Outtrim is a former coal mining town on the edge of the Strzelecki Ranges whose mining operations were established in the late 1880's and ceased in the early 1920's. It provided approximately 1000 historic lots for development to support the growth of this town which was once thriving, but most of these are currently undeveloped.

The town area has now primarily reverted to farmland and from a planning scheme perspective, Outtrim is considered to be a Locality rather than a Town (in exhibited Clause 21.02-1).

The whole locality is included in the Farming Zone and ESO Schedule 5 (Areas Susceptible to Erosion), with some parts also affected by the RXO and a small area in the eastern portion of the restructure area affected by ESO Schedule 9 (Giant Gippsland Earthworm and Habitat Protection).

The Outtrim Restructure Plan is relatively complex given the irregular subdivision and road alignment as well as varied existing conditions. The exhibited version of the Restructure Plan proposes a Special Restructure Area for the land to the north west. This is proposed to be revised in the most recently amended version of the Restructure Plan (Document 18B).

Figure 16 Outtrim Restructure Plan



(ii) The issues

Key issues for Outtrim relate to the number and configuration of the restructure Lots, as well as access and road closure issues. Matters of environmental values and landscape character were also raised.

(iii) Submissions

Council prefaced its submissions about this settlement with the comment that it was important to try to achieve a suitable balance between not overly interfering with land ownership rights but achieving an appropriate strategic planning outcome. For example, in some instances, when asked by the Panel why a new dwelling opportunity would be

appropriate, Mr Griffiths on behalf of Council responded that it would provide "the carrot" (incentive) to consolidate the lots.

A number of submissions were received in respect of the Outtrim Restructure Plan.

Brian, Yvonne and Karl Hess requested an increase in the number of Restructure Lots comprising their approximate 12 hectares landholding from one (Lot 15) to three lots. They proposed two lots of 0.5 to 2 hectares accessed from Lomagnos Road and a balance lot of 8 to 11 hectares. They also sought formalisation of Lomagnos Road.

Even though the overall parcel contains around 60 lots, Council did not support this proposal since it was considered to increase the potential number of dwellings on steep and unsuitable terrain in the Farming Zone (subject to Environmental Significance Overlay Schedule 5 - Areas Susceptible to Erosion) and would increase the likelihood of land use conflict with surrounding commercial agriculture to the north and west. It also identified that new lots would be created without suitable access since the constructed road is not fully within a designated road reserve and extends over private land, with other modes of access being impractical.

Helen and Lindsay Broad sought closure and acquisition of an unused road reserve along their northern boundary. They were concerned that their adjoining neighbours had not acted appropriately in managing this land (including alleged unlawful vegetation removal).

Council urged the Panel to accept that disputes between neighbours and alleged vegetation removal are not relevant matters in considering the Amendment. It proposes to refer the road closure request to its assets department to consider initiating the process under the *Local Government Act 1989*.

John and Margaret Freeland objected to the inclusion of their land in the Restructure Overlay (Restructure Lot 13) since they considered there would be no benefit from site consolidation and they have engaged in responsible land management practices.

Council confirmed that the proposed Restructure Lot 13 remains appropriate since it would prevent titles to vacant land being onsold to purchasers who may have an expectation that they could use the land for a dwelling. It explained that the Restructure Overlay would not require this land to be consolidated in practice, unless the owners undertook certain activities such as extending the dwelling or outbuildings over lot boundaries (although the Panel notes that this will depend upon the final detail of the Incorporated Document). It also explained that the configuration of the lot would facilitate the retention of the as-constructed Lomagnos Road if this was able to be formalised.

Joey Whitehead of Beveridge Williams made a submission on behalf of Rob King, the purchaser of land within Restructure Lot 8. The submission proposed excluding two parcels of land from the south west corner of Restructure Lot 8 to consolidate with an adjoining property to the immediate north since structures associated with that dwelling have been constructed over the property boundary.

Council considered it was premature to change the boundary of Restructure Lot 8 until the property purchase had been completed but agreed that this change could be made if this was resolved before adoption of the Amendment.

The new owner proposed to create two lots from the remainder of Restructure Lot 8, one (0.2 hectares) to contain the existing dwelling on the south east corner of Main Road and Cross Street and the other (0.4 hectares) to contain nine parcels of land fronting Cross and Bead Street.

Del McGlashan on behalf of a group of local residents made a submission to the Panel, generally supporting the approach taken by the Amendment to maintain rural character, avoid harm to environmental values and allow positive watercourse management.

At the same time, these residents opposed the proposal identified for Restructure Lot 8. They submitted that an additional dwelling opportunity on the King's land would be inconsistent with local character and policy (including Clause 22.05) and would risk environmental values including erosion, stormwater runoff and water quality. Significantly, submitters were concerned that a new dwelling would obstruct the "rural vista".

Council opposed Mr King's request for a number of reasons - principally its inconsistency with policy and the purpose of the zone. It was also concerned to avoid creating an undesirable precedent. Outtrim has not been identified as a settlement for future growth. It also considered the particular proposal would also have the potential to increase land use conflicts and environmental or landscape impacts.

In relation to Restructure Lot 17, Council advised at the Panel Hearing that legal access (via an easement of way) needed to be provided to the adjoining landholding (described by Council as Lot 1 on Title Plan 164640). Council subsequently made provision for this access in the amended Incorporated Document (Document 18B).

The Special Restructure Area was revised in the updated Amendment (Documents 18A, 18B, 18C). It was converted to Restructure Lots 22 and 23, with Restructure Lot 16 extended to include the land to the west. This would significantly reduce the number of potential dwellings compared with the initially exhibited Restructure Plan that proposed that lots be created "to Council's satisfaction" with a minimum of 8 hectares, legal access to a road, close disused road reserves and provide a 400 square metre development envelope with maximum slope of 15%. A maximum of 8 Restructure Lots were permitted for this area in total.

Notice was given of this proposed change and it appears that no submissions were received in respect of it, assuming the impact was understood by owners.

At the Hearing, Council identified complexities associated with Restructure Lot 21 in particular given the lack of consistency between the constructed Lomagnos Road and the formal road reserve. The situation with the alignment of Lomagnos Road outside the formal reserve has not been resolved to date despite previous attempts.

In its updated Amendment documentation, Council confirmed that it proposes to undertake further work to investigate the potential for a Public Acquisition Overlay to acquire private land in the road reserve in line with an accurate survey of the road as constructed.

In correspondence following the targeted notification in 2019, Council also identified a further issue with the Outtrim Restructure Plan, specifically in relation to Restructure Lot 9. Council advised that the cadastre associated with that restructure lot does not match the Title Plan and accordingly, it seems that part of the road reserve has been mistakenly included in the

lot. Council advised that the road reserve area (of approximately 872 square metres) described as R-1 on LP3952 should be removed from the Restructure Lot.

(iv) Discussion

In relation to some of the smaller Restructure Lots, such as Restructure Lot 3, where a new dwelling opportunity would be created, on balance, the Panel accepts Council's judgement that it would be acceptable since they sit within a cluster of existing dwellings.

It also accepts Council's description of Restructure Lot 5 as "*a good win*" since it is extensive, contains a larger number of lots and road reserves currently in common ownership. It contains an existing dwelling but is used as part of a larger agricultural enterprise that includes land outside the Restructure Overlay area.

The Panel accepts that it would be reasonable to realign the boundary of Restructure Lot 8 to exclude the land with structures serving land to the immediate south if property settlement was finalised in time. However, it agrees with Council and the resident submitter group that it is not appropriate to create an additional dwelling opportunity for that lot which is already of confined area at 0.7 hectares. Although the land sits within a "pocket" of existing dwellings and does not have genuine agricultural capacity, it would also unacceptably bring a potential new dwelling closer to commercial agricultural activities. It is also not justified having regard to the purposes of the Farming Zone.

The Panel strongly supports the reconfiguration of the Special Restructure Area as shown on the amended Incorporated Document (Document 18B). Even though the Special Restructure Overlay supported the agglomeration of a very substantial number of lots and road reserves, the Panel regarded the Special Restructure Overlay provisions as exhibited as somewhat arbitrary and poorly resolved. It would have potentially created multiple dwelling opportunities on land with significant topographical, visual and environmental constraints, bearing in mind that there is no impetus for increased residential development in the Farming Zone.

Proposed new Restructure Lots 22 and 23, and extended Restructure Lot 16 are considered to strike a suitable balance between site consolidation while allowing two new dwellings – one of which would be on land otherwise able to be used for this purpose without a planning permit given its substantial size.

The Panel is conscious that a number of submitters in this area seek road closures that are not expressly included in a proposed Road Closure Overlay. Some of their properties are not proposed for inclusion in the Restructure Overlay and it would not be essential for them to be closed and consolidated into adjacent properties before land could be used or developed for particular purposes.

As indicated by Council, road discontinuance applications would need to be made using standard processes under the *Local Government Act 1989* because they are outside the current planning scheme Amendment.

In relation to Outtrim in particular, the Panel highlights the urgent need to resolve the access issues in relation to Lomagnos Road both in terms of functional access arrangements and the reservation of land for road purposes.

The Panel supports the removal of part of the road reserve from Restructure Lot 9.

(v) Conclusions

The Panel concludes:

- It supports the provision of a single dwelling opportunity on the land within Restructure Lot 8 and the realignment of the boundary of this lot to reflect the ownership of existing structures if settlement of the property is completed before the Amendment is approved.
- The replacement of the Special Restructure Area with Restructure Lots 22 and 23 is supported.
- The inclusion of a requirement within the Incorporated Document for legal access to be provided from Restructure Lot 17 to the adjoining property is appropriate.
- Further investigation should be undertaken to resolve the alignment of Lomagnos and the extent of the road reserve.
- The removal of a small portion of the road reserve incorrectly included in Restructure Lot 9 is appropriate.

(vi) Recommendations

28. For Figure 5, Outtrim:

a) realign the boundary of Restructure Lot 8 to reflect the ownership of existing structures if settlement of the property is completed before the Amendment is approved.

b) replace the 'Special Restructure Area' with Restructure Lots 22 and 23, and an extended Lot 16, as shown on Figure 5 of the amended Incorporated Document (Document 18B).

c) amend Restructure Lot 9 to remove the road reserve described as R-1 on LP3952.

29. For the Incorporated Document, Outtrim:

a) include a requirement for access to be provided from Restructure Lot 17 to Lot 1 on Title Plan 164640, as addressed in the amended Incorporated Document (Document 18B).

b) include a requirement for further strategic work to be undertaken in relation to Lomagnos Road, as addressed in relation to Restructure Lot 21 of the amended Incorporated Document (Document 18B).

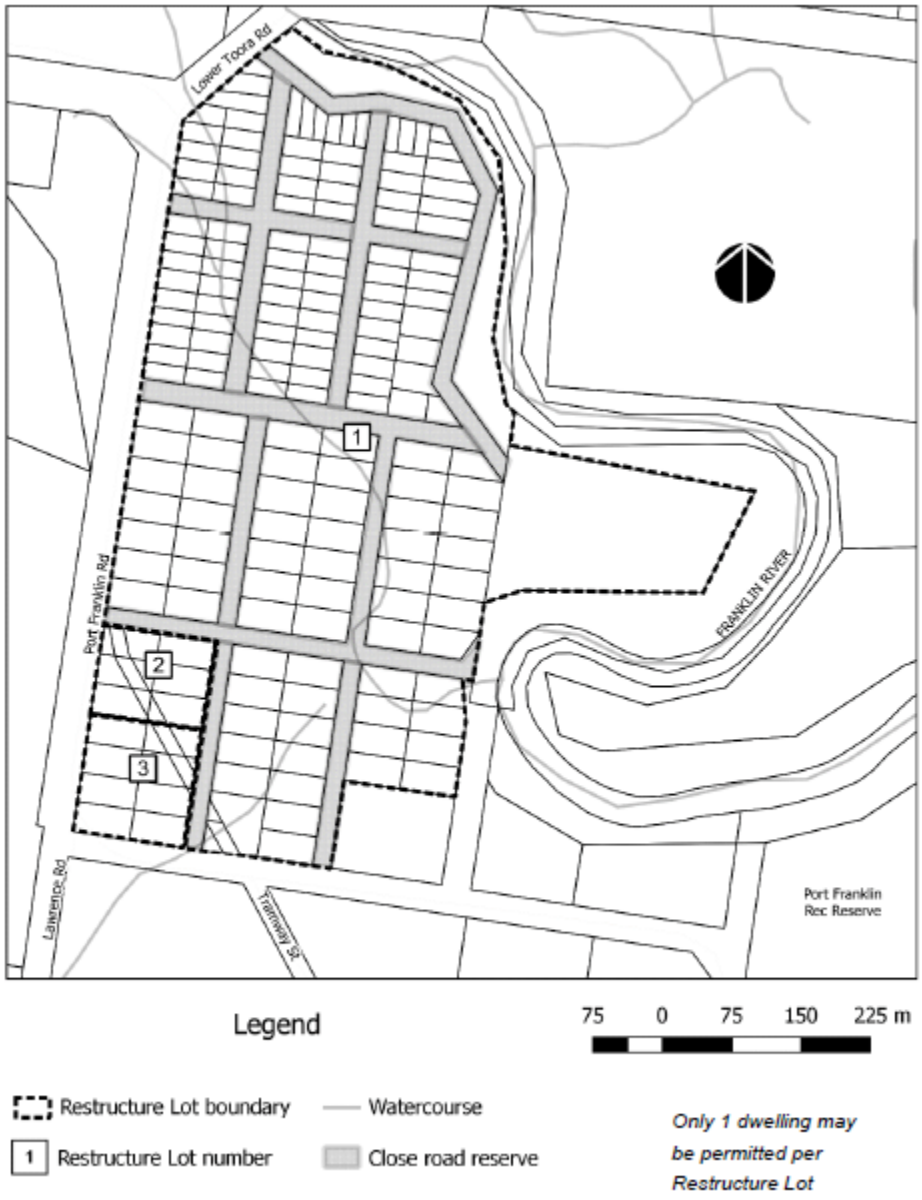
7.10 Port Franklin – Port Franklin Road

(i) Background

This Restructure Plan proposes three Restructure Lots; one substantial parcel south of Lower Toora Road adjacent to the Franklin River, and two smaller lots in the south western corner.

The Port Franklin Road Restructure Area is included in the Farming Zone, Environmental Significance Overlay Schedule 3 (Coastal Settlements – Non Residential Zones), the Significant Landscape Overlay Schedule 3 (Corner Inlet Amphitheatre) and the Land Subject to Inundation Overlay.

Figure 17 Port Franklin Road Restructure Plan (Figure 13)



Port Franklin Road Restructure Plan contains approximately 192 land parcels in an area of 33.5ha approximately

(ii) The issues

The issues relate to the number and configuration of the proposed Restructure Lots.

(iii) Submissions

Linda and Gerard Van Dyke sought an increase in the number of proposed Restructure Lots encompassing their landholding from three to seven.[24] They submitted that their 30 hectares

[24] Although the map accompanying their submission indicated six rural residential lots of 1 to 2 hectares and a balance lot between 18 to 25 hectares.

property is suitable for rural residential use, with infrastructure available and located in reasonable proximity to facilities at Port Franklin and Foster.

Council opposed this request since it considered the proposal would remove the land from agricultural production and result in a proliferation of dwellings. It also emphasised the potential for impacts on the open rural landscape in an area designated Significant Landscape Overlay and within Environmental Significance Overlay. It explained that the submitters' proposal would "*result in a continual line of houses on small rural lots [on the only road] from Port Franklin to Bennison, noticeably changing the open … flat rural landscape*".

(iv) Discussion

The Panel is not persuaded that it is necessarily appropriate to create three new dwelling opportunities for this landholding as proposed by Council in the Amendment, even though it would involve the consolidation of a substantial number of small, regular shaped lots and a network of unmade road reserves. It accepts that there are already existing dwellings south of Port Franklin Road but, at most, the Panel would support a large lot that could be capable of being used for agriculture in addition to a dwelling and one smaller lot on the south west corner of the property - a total of two Restructure Lots.[25]

It will be evident that the Panel does not support any increased number of Restructure Lots for this land. The Panel accepts the Council's assessment that "*the submitters' proposal goes beyond a reasonable balance between recognition of an old and inappropriate subdivision, and the purpose and provisions of the underlying Farming Zone and existing Overlays*".

While it notes the current owner's financial aspirations, it is unable to give this factor any real weight. Its role is to independently evaluate the strategic planning undertaken by Council which focuses on suitable land use and development outcomes, rather than the more variable personal circumstances of current owners.

In the Panel's view, the creation of a larger number of smaller lots for dwellings with a balance lot that could also accommodate a dwelling would be a poor strategic response to the objectives of the zone and policies seeking to preserve agricultural land and limit the proliferation of dwellings. In addition, this land has sensitivity given its direct adjacency to the Franklin River and its proximity to the Corner Inlet which would warrant increased lot sizes and reduced potential for new dwellings.

(v) Conclusions

The Panel concludes:

- Council should consider whether to consolidate Restructure Lots 2 and 3 as shown on exhibited Figure 13.

[25] It supports Council's suggestion that the larger the area of the balance lot, the more likely it will continue to be used for agriculture, potentially as an out-paddock to a nearby farm. The Panel is also generally conscious that the land owners also own an existing dwelling on an adjacent parcel of land that is not within the Restructure Overlay area.

7.11 Port Welshpool

(i) Background

Port Welshpool is identified in the Strategy as a Village and was exhibited in Clause 21.17-1 as a Coastal Village. The Strategy identifies that Port Welshpool has a series of development constraints which include:

- no reticulated gas
- being prone to coastal processes
- significant landscape character including that recognised by Environmental Significance Overlay Schedule 3 (Corner Inlet Amphitheatre)
- bushfire prone land to the north and west
- extent of surrounding Crown land
- partial coverage of the Land Subject to Inundation Overlay recognising the risk of flooding.

Exhibited Clause 21.17-1 documents Council's vision to contain growth within the settlement boundary and to minimise risks and impacts associated with development. The Strategy also identifies 59 vacant and 16 potential lots in the Township Zone.

The following zoning and overlay controls currently apply to Port Welshpool:

- the land within the settlement boundary at exhibited Clause 21.17-2 is in the Township Zone with the Public Park and Recreation Zone abutting the Township Zone land to the north, east and west and the Public Conservation and Recreation Zone affecting Corner Inlet and land further to the west. North of the Public and Park and Recreation Zone land is primarily included in the Farming Zone
- the Environmental Significance Overlay Schedule 3 (Corner Inlet Amphitheatre) affects all of the land in the settlement boundary and land to the north, east and west
- the Land Subject to Inundation Overlay affects most land within the Township Zone and extends north, south, east and west of it
- the Bushfire Management Overlay affects approximately half of the Township Zone and extends north, north east and west
- there is one property in the town affected by the Heritage Overlay.

Land to the north of the settlement boundary is proposed to be included in the Restructure Overlay.

The Port Welshpool Restructure Plan was not included as part of the Strategy. It is one of seven Restructure Overlays formulated after the Strategy was prepared and also after the first iteration of the Amendment was prepared.

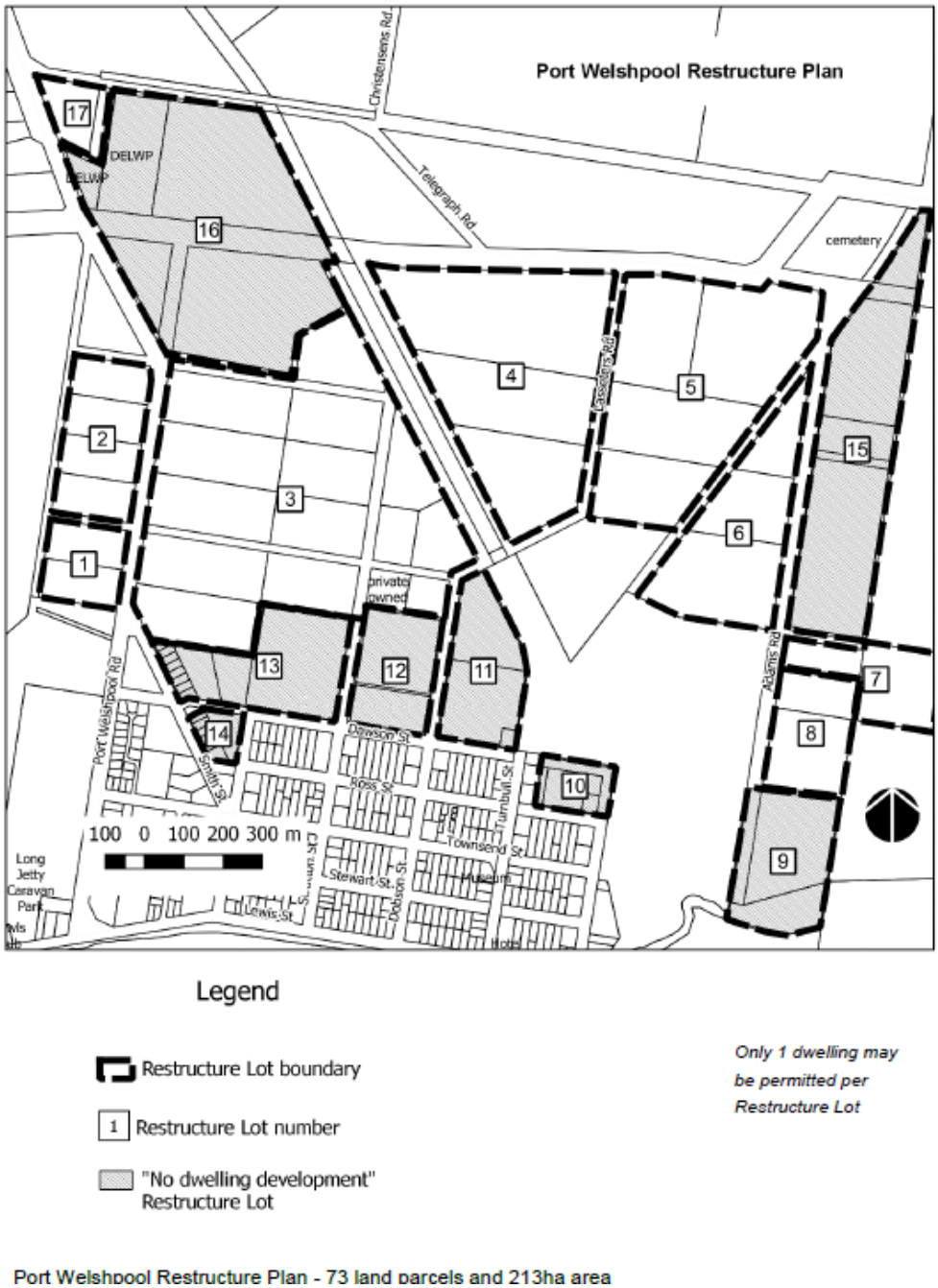
Council advised in its submissions that the seven additional Restructure Plans, including Port Welshpool, were developed because of increasing development interest in these areas. It considered their inclusion was consistent with the approach by the CMA which "*routinely recommend[ed] that dwellings not be approved if the land was in the Land Subject to Inundation Overlay or access to the land was lost during flooding"*.[26]

[26] Refer Councils' Part A submission, paragraph 116.

As a response to this history and opposing submissions, Council requested the Panel to give "special consideration" to the inclusion of Port Welshpool in the Restructure Overlay. This was emphasised by submitters who were critical of the process and considered that there had been a lack of proper consultation by Council. They also felt that they had been denied genuine opportunities to explore alternatives for their land with Council and that many of their queries had gone unanswered (including through the Panel process).

The Port Welshpool Restructure Plan as included in the exhibited Amendment documentation is shown in Figure 18 below. The eight lots shaded grey with the annotation 'no dwelling development' are all vegetated Crown land.

Figure 18 Port Welshpool Restructure Plan (Figure 19)



(ii) The issues

Key issues relate to various Restructure Lots where submitters considered that proposed lot configuration or consolidation was inappropriate, and the subsequent restriction on future dwellings, and potentially other uses and development, was unreasonable. Flooding and bushfire were also underlying issues addressed by many submitters.

(iii) Submissions

Summary

Eleven written submissions were lodged in relation to the Port Welshpool Restructure Plan. Of these, one submission had no objection (DELWP in relation to the Crown land), one sought a change to the mapping to improve clarity, one was from the CMA in relation to flooding issues and eight submissions sought changes to the Restructure Plan. Two of the eight submitters seeking changes presented to the Panel comprehensively at both hearings. A third submitter also presented at the second hearing.

As a result of the targeted notification that occurred in 2019 of the revised Amendment documents, a further six submissions were lodged - five previous submitters and one new submitter.

At the Panel Hearing, Council advised that in general, the existing subdivision proposed to be restructured was 'inappropriate' because it was highly unlikely it would be created today. It emphasised that the Restructure Overlay area primarily consists of vacant lots but that there would be greatly intensified rural residential development if more dwelling opportunities were provided. It referred to the exhibited Framework Plan which seeks to prevent an increase in the number of residents (through additional dwellings) given the levels of environmental risk. It contrasted this with the development of the township of Welshpool.

CMA

The CMA originally advised that Restructure Lots 1-3 and 6-15 in Port Welshpool or their access and egress were assessed to not meet flood depth criteria and that authority did not support their use or development for a dwelling. The CMA only supported the use and development of a dwelling on Restructure Lots 4, 5 and 16 (subject to siting constraints) and Restructure Lot 17 (without siting constraints).

Following the Directions Hearing, Council and the CMA met and reviewed the nominated Restructure Lots, with CMA subsequently confirming by letter dated 21 September 2018 that:

- as a result of the further engagement with Council, the flood hazard for each restructure lot for Port Welshpool and Toora has been assessed and the CMA has identified proposed lots which have an inappropriate flood hazard.
- issues of safe access to settlements such as Port Welshpool, which will be inundated in certain flood events, would be more appropriately addressed as part of the future Coastal Strategy that South Gippsland Shire has committed to and, as such, does not need to be considered as part of the Amendment.

The CMA attended the hearing to explain its position in greater detail, especially how its initial view had shifted. It confirmed that Restructure Lots now identified for a potential dwelling have the potential to safely contain a dwelling having regard to acceptable levels of flood risk

and the capacity for potential mitigation measures. This assessment included consideration of flood free access to the properties and noted that whether appropriate access can be provided is able to be assessed via planning scheme provisions (but that accessibility requirements can differ depending upon the nature of the proposed land use).

Individual submitters

A number of submitters were concerned about the proposal to include Port Welshpool within the Restructure Overlay in general.

Brigid Watson objected to the inclusion of her property within Restructure Lot 8. She also sought an exemption from Port Welshpool being included in a Restructure Plan since:

- Port Welshpool landowners are appropriate land managers
- The Amendment seeks to 'void' titles contrary to property rights and should not be used to overcome 'past errors'
- when the town was first planned and subdivided, the lots were intended to support a port and that needs to remain as there is minimal vacant land outside Crown ownership
- the Amendment creates a 'non-development' zone which could result in the land being exploited for coal or wind farms.

Ms Watson explained to the Panel that she operates a seed production business, which is a legitimate agricultural land use, and that an important part of her business is having a dwelling co-located with the seed operation to enable on-site monitoring of production. The Panel was advised that there is an existing dwelling on Ms Watson's southernmost lot but the northern lot is vacant. As a result of the Restructure Plan, she would be unable to locate a dwelling on the northern lot.

Ms Watson also lodged a further written submission to the Amendment following the targeted notification and appeared at the further Hearing. Additional issues raised by Ms Watson in her second round of submissions included:

- inadequate community consultation, particularly in relation to the amended documents
- the requirement to consolidate land before section 2 uses can be granted a permit was unreasonable.

Ms Watson also included a series of questions that she presented to the Panel.

Council did not support an exemption from the Restructure Plan for Ms Watson's properties. In response to her first submission, Council advised that the Restructure Plan will prevent the development of an inappropriate cluster of dwellings along Adams Road on land that is unsuitable for such development due to flood hazard, access and bushfire risk. It noted that the submitter's northern land parcel is also covered by the Bushfire Management Overlay.

The CMA explained that it did not support the development of an additional dwelling on this land since it would not have acceptable flood free access and would pose a flood hazard.

Ms Watson responded that she considered that the CMA regarded the land as having *limited* potential for development, not 'no potential' for development.

Paul and Penny Hamlett presented to the Panel objecting to the inclusion of their land in Restructure Lot 5. Their land comprises two parcels, both with frontages to Telegraph Road, and does not currently include a dwelling. Restructure Lot 5 also includes a further two lots to the south under different ownership, one of which contains a dwelling. This would effectively preclude the use of their land as a dwelling if included in this Restructure Lot.

They raised the following key issues, in summary:

- There has been inadequate consultation in relation to the application of the Amendment to Port Welshpool
- There would be no community benefit as a result of the Restructure Plan. They stated that "*the most likely outcomes are: the land ownership will remain fragmented, consolidation won't occur and the land will suffer due to neglect and stifled development*".
- The subdivision does not fit the definition of 'old and inappropriate' as Council was aware of the lots being sold as individual properties when Lasseters Road was constructed in 2003 and previous strategic documents identified the land as being important to support future tourism opportunities for the town.[27]
- The Strategy does not identify this settlement as an area where new dwellings could not be developed. The settlement differs from others like Toora since the restructure land is 'behind' the township rather than adjacent to the foreshore.
- The submitters' property has primarily been used as 'turn out' paddocks, has a poor history of pasture improvement and does not constitute productive agricultural land.
- The property is surrounded by publicly owned land and does not impact dairying activities to the north. Any future use of the land is buffered from impacting nearby agricultural activities.
- The presence of overlays affecting the land is not a reasonable basis for applying the Restructure Overlay. These provide ample controls and the Incorporated Document should not "*overrule referral authorities*".
- Not all of their land is covered by the Land Subject to Inundation Overlay and their view was that the CMA has confirmed that it could support the construction of a dwelling on Lot 6 (the easternmost of the two lots).
- They believed it was possible to meet the requirements of the Bushfire Management Overlay in the location also supported by the CMA.
- They intend to develop their property for nature-based tourism activities which would be consistent with applicable overlays, including environmental and landscape overlays.

The Hamletts submitted that the Lasseters Road subdivision should be removed from the Restructure Overlay. Instead, they suggested that Council should enter into discussions with land owners to explore alternate mechanisms to provide for the sustainable long term use and development of the land, including conditions to voluntarily consolidate their two titles and a discussion about the potential to rezone some of the land to the Rural Activity Zone.

At the further Hearing, they mentioned that Council could also investigate the introduction of section 173 agreements to identify potential risks to development from climate change (which

[27] With former zoning Rural Use Zone, ESO3 and Environmental Audit Overlay (removed in 2009).

the Panel was advised is available for new dwelling development within the township of Port Welshpool).[28]

Additional issues raised by the Hamletts in their second round of submissions included:

- there has been inadequate community consultation in relation to the amended documentation that was the subject of targeted notification. All ratepayers should be notified and that the documentation should at least have been considered by Councillors prior to further notice being given
- the changed use and development provisions in the Incorporated Document are unreasonable and overly restrictive.

The Hamletts also included a series of questions in relation to particular land uses and whether they would be possible if the revised Incorporated Document took effect. As an example of their concerns they submitted a letter from the Snake Island Cattlemen Association outlining the way their land is currently used en route for members and tourist groups.

Council did not support the Hamlett's submissions, highlighting a range of matters including the proximity of the properties to commercial farms and environmental risks as well as the landscape sensitivity as part of the backdrop to the Corner Inlet Amphitheatre (Environmental Significance Overlay Schedule 3). At the initial hearing Council also clarified that the Restructure Overlay seeks to limit new *residential* development – not development proposals such as sheds or works such as tracks.

The CFA and CMA provided commentary about the Hamlett's land at the Hearing.

The CFA provided a desktop assessment of the capacity for a property at 1 Lasseters Road, Port Welshpool to accommodate a new dwelling on request by the owner[29] and commented on a 'Bushfire Report' prepared by them. The CFA comments in document 8 referred to the proposal involving a '*non habitable building' that is 'not associated with a dwelling*' and indicated it would be likely to support that proposal with conditions (subject to various bushfire protection measures outlined in the report).[30]

Ms Coxon on behalf of the CFA subsequently advised at the Hearing in response to questions that the broader question for the appropriateness of this land for a dwelling is whether it is consistent with state planning policy, rather than the application of the Bushfire Management Overlay in and of itself.

When questioned by the Panel about tourism opportunities and flooding impacts (as raised by the Hamletts), the CMA advised that a different approach can be taken for proposals that do not involve overnight stays, compared to where a dwelling is proposed. The location of a property in the Land Subject to Inundation Overlay would not necessarily preclude tourism related opportunities – provided they did not involve overnight stays.

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28 The Panel makes no comment about the lawfulness or effectiveness of such agreements, or whether they are in fact consistent with the objectives of planning in Victoria since this document does not form part of the Amendment.

29 Document 8.

30 The CFA assessed that property as a relatively low landscape risk (Type 2 landscape) but observed that it was likely to be subject to ember attack and radiant heat in the event of a bushfire, which could approach from multiple directions. However, it was likely that radiant heat exposure benchmarks could be met, at least for non-habitable development.

Council did not support the Hamlett's position. It considered that the subdivision was inappropriate in the context of 'current scientific knowledge and planning controls'. In essence, it would reflect a 'de facto' rural residential subdivision on land with environmental constraints which is not supported by current planning policy.

A submission was made by Kevin Alder and Patricia McCarthy in relation to their land located immediately east of the Lasseters Road property discussed above and which forms the northern part of Restructure Lot 6 (which comprises three lots in three different ownerships). A submission was also lodged by Owen and Sarinya Storrie, landowners of the centrally located lot.

Those submitters objected to the application of the Restructure Plan on the basis that they wish to be able to develop a dwelling on their respective lots and will be unable to if the Restructure Plan is applied since there is an existing dwelling on the southernmost lot. The submitters noted the potential loss of value to their properties as a result of the Restructure Plan, highlighting that there is ample room for dwellings to be constructed. One submitter noted that with the proposed marina restoration and town development, the land could assist in enhancing the tourism potential of the area.

Council did not support these submitters' position, highlighting the environmental constraints that apply to Restructure Lot 6, the fact that the Restructure Plan would prevent an inappropriate future cluster of dwellings in this part of Port Welshpool and noting that land value is not a relevant consideration when assessing planning scheme amendments.

Peter and Christina Delithodoris also made a submission opposing the application of the Restructure Plan. They own land that forms part of Restructure Lot 4 which comprises three land parcels in three different ownerships, with the northernmost parcel containing an existing dwelling. The submitters own the central land parcel.

They objected on the basis that they have already built a shed on the site and intended to build a dwelling, that any development would be respectful of the landscape setting and their land is large enough (at 7 hectares) to accommodate any siting requirements as a result of climate change. The submitters also noted that the existing dwelling on the northernmost property in Restructure Lot 4 is derelict and not used by its owners.

In a similar way to other submissions, Council did not support this particular submission, highlighting the environmental constraints of the property, the need to avoid de facto rural residential development in the area, the proximity of the property to commercial farms and the fact that land value is not a relevant planning consideration.

Nick and Julie Anedda own land with an area of approximately 4 hectares designated as Restructure Lot 1 which comprises two Crown land titles, of which the northernmost one contains an existing house whilst the southern lot is vacant. The submitters wish to be able to develop the southern lot with a dwelling and to then sell the northern lot and dwelling. They explained that they have not experienced flooding or bushfire issues in the past and that they would be disadvantaged by the Amendment.

These submitters subsequently lodged additional submissions in response to the targeted notification and appeared at the further Hearing. These additional submissions also noted they maintain the gate that controls flood access at the rear of their property and this provides

for appropriate management. There is no need to restrict the ability to construct an additional dwelling.

Council did not support this submission, advising that the land is located in a flood and bushfire risk area and that development is not supported by the CMA on this lot due to the risk of flooding. Council also reiterated that development of a dwelling on land less than 40 hectares in the Farming Zone is not a 'right'.

The owner to the north of this property, Robin Hall also lodged a submission opposing the Restructure Plans and the inclusion of his 2 hectares lot in Restructure Lot 2. That comprises four lots in four different ownerships, with the submitter's lot comprising the southernmost lot and an existing dwelling located on the northernmost lot.

The submitter stated that he purchased the property expecting he would be able to build a dwelling on it and obtained a permit for a dwelling, which has subsequently lapsed, but which he understood could be renewed. Like many submitters, he advised that an inability to develop a dwelling on the land would greatly impact him financially. These concerns were re-emphasised in a submission following targeted notification.

Council did not support this submission, noting that planning controls and policies have changed considerably since the submitter purchased the property in 2002 and highlighting in particular the flooding constraints and proximity of the property to a commercial farm.

A submission was also made by Tom and Dawn Robb whose land forms part of Restructure Lot 7, just north of the land owned by Ms Watson. The land in question has an area of 4.45 hectares, is vacant and used for grazing purposes. It has a narrow frontage of 20 metres to Adams Road and forms part of a larger farming property of 214 hectares.

Also included in Restructure Lot 7 is a land parcel in different ownership which fronts Adams Road and which already contains a dwelling. The submitters explained that the land proposed for inclusion in the Restructure Lot 7 comprises poor quality farmland, that they wanted to build a home on the property and that 'tying' the property to the adjoining property (in different ownership) via the Restructure Plan would be inappropriate.

These issues were also raised in a subsequent submission to the amendment following the targeted notification which explained that the Robbs contemplated consolidating their smaller property with their larger farming property to enable the construction of a dwelling however this would be expensive to achieve.

Council did not support this submission, highlighting the environmental constraints relating to both flood and bushfire risk.

One final submission was lodged by two new submitters, Beverley and Graeme Goding following targeted notification. The Godings advised that they had recently purchased a block of land in March 2019 with the intention of building either a home for retirement or for family to assist with the adjoining farming operation. They advised that as the lot is less than 4.1 hectares they should be allowed to build on the property.

Council did not respond directly to these issues, instead noting that the issues of application of the Restructure Overlay had already been addressed at the earlier Panel Hearing.

(iv) Discussion

Approach to Port Welshpool

The Panel agrees with the submitters that there appears to have been much less consultation and negotiation with landholders in Port Welshpool compared to those settlements where the need for a Restructure Plan was identified as part of the preparation of the Strategy. The inclusion of Port Welshpool also occurred later in time.

Nonetheless, the Panel considers that the inclusion of Port Welshpool in this Amendment is reasonable and that due process was still been followed through the formal exhibition process undertaken for the Amendment. In the Panel's view, the inclusion of Port Welshpool in this Amendment has appropriately enabled it to form part of a consolidated Amendment seeking to confirm settlement strategies for settlements within the Shire and to achieve appropriate consolidated land outcomes.

The Panel notes submitters' concerns that smaller Restructure Lots have been proposed in other Restructure Plans such as Salmon Road, Hedley compared with Port Welshpool.

While the 'high level' planning policy framework is the same for each settlement, the applicable zoning and overlay controls, the size and number of existing lots to be restructured, existing land use, services, environmental constraints and locational attributes differ across all settlements.

In the case of Port Welshpool, the scope for new dwellings outside the township boundary has been identified by Council as more restrictive compared with some other settlements. However, the Panel considers this is an appropriate outcome because of the particular circumstances of that township.

Approach to assessing submissions

The following key matters have influenced the Panel's consideration of the various submissions lodged in relation to Port Welshpool:

- State planning policies relating to the management of settlements, protection of agricultural land, and the management of environmental risks
- the significant change that has occurred over time in the approach to rural residential development and current state policy which discourages such development except in limited circumstances
- Local planning policies which also highlight where growth in the municipality will be encouraged or discouraged, noting in particular the Strategy's directions for Port Welshpool to contain development *within* the existing settlement boundary of the town
- The significant impacts of climate change, including coastal inundation and fire risk on settlements such as Port Welshpool
- The uniqueness of the Port Welshpool natural environs – with effectively two 'bands' of Crown land extending around the town (with the majority of the submitters land located between these two 'bands') and with the first 'band' presenting, in the Panel's view, as a logical natural boundary to the township of Port Welshpool
- The agricultural land uses that extend (in some cases) between, as well as extending out beyond the 'bands' of Crown land

- The fact that any alleged reduction in land value as a result of a planning scheme amendment or planning permit application (or indeed gain in land value) is not a direct or overriding planning consideration.

Keeping these considerations in mind, the Panel believes that the approach Council has taken to the Port Welshpool Restructure Plan area is generally sound and is appropriate in the context of current planning scheme policies and controls and environmental constraints.

It is conscious that opportunities for new dwellings are comparatively more limited under the Restructure Plan for Port Welshpool when considering other settlements in the Shire, however, this is a product of the nature of township boundaries and environmental characteristics of the settlement.

Response to individual submissions

The Panel acknowledges the perceived need for Ms Watson to construct a new dwelling on her northernmost lot to assist the management of her current agricultural land use. However, the Panel highlights the following:

- her properties are separated from the Port Welshpool township by a large area of Crown land (the properties are located beyond the first 'band' of Crown land)
- her properties are located in the Farming Zone and are also affected by the Bushfire Management Overlay, Environmental Significance Overlay Schedule 3, Land Subject to Inundation Overlay and the Landscape Significance Overlay Schedule 3
- the properties abut (to the east) a larger land parcel that is used for farming purposes with potential to be worked jointly
- the CMA did not support a dwelling on Restructure Lot 8 given the level of flood risk.

In relation to the 'need' for a dwelling to support the agricultural use of the land as stated by Ms Watson, the Panel must consider current land use circumstances when reviewing planning scheme changes, as well as future implications. The reality is that if a dwelling was permitted on her vacant lot to support the current agricultural land use, and the lot was then onsold or the nature of the agricultural use changed to a less intensive one, the dwelling could in effect convert to a rural residential land use.

Such an outcome would be inappropriate in the Farming Zone and contrary to policy, with the potential to result in a proliferation of dwellings in an area not suited for such development due to its locational and environmental constraints as outlined above.

Therefore, the Panel does not support Ms Watson's exemption request and agrees with Council that her properties should be retained in Restructure Lot 8.

The Panel notes the extensive work Mr and Ms Hamlett put into their presentation for the Hearings.

However, the Panel considers that the application of the Restructure Plan to their land as proposed by Council is appropriate, even appreciating that they may not be able to realise a dwelling on their two lots given the existing dwelling within the remainder of the Restructure Lot.

Similar factors apply in the case of the Hamlett's two lots to those identified above, including:

- the separation of the properties from the Port Welshpool township by Crown land

- their location in the Farming Zone as well as the application of the Bushfire Management Overlay, Environmental Significance Overlay Schedule 3, Land Subject to Inundation Overlay and Significant Landscape Overlay Schedule 3
- the proximity of these properties to more substantial farming enterprises with capacity for impact.

The Panel acknowledges the CFA's advice that it may be possible to obtain approval for a non-habitable building not associated with a dwelling or that there may be some confined locations on the property that could potentially host a dwelling subject to appropriate bushfire mitigation measures.

Likewise, the Hamletts provided correspondence from the CMA suggesting that it may support a dwelling on the north east portion of the property, which is not covered by the Land Subject to Inundation Overlay. It is also relevant that there are two road accesses to the property in case of emergency.

Nonetheless, the Panel considers that even if there is some potential for a non-habitable building to be supported in the north east corner of the site by the relevant referral authorities, this does not justify removal of the site from the Restructure Plan given the overriding planning policy framework, locational characteristics of the site and the broader environmental constraints.

A recurring issue throughout the Amendment was a concern by some submitters that the Restructure Overlay would effectively "sterilise" their land from certain types of land use or development unless land was consolidated. Version 3 of the Incorporated Document heightened these concerns by seeking to require consolidation of lots before a section 2 use in the Farming Zone could be approved.

For example, the Panel notes the potential for the Hamlett's land and other properties in Restructure Areas to be used for tourism purposes. This is addressed in more detail in Chapter 6.

In relation to lots forming part of Restructure Lot 6 (submitters Mr Alder and Ms McCarthy and Mr and Ms Storrie), for similar reasons outlined above in relation to the Hamlett's land, the Panel considers that the application of the Port Welshpool Restructure Plan to the east of their land is also appropriate. Therefore, these submitters' request for their land to be removed from the Restructure Plan is not supported.

Similar principles also apply to submissions lodged by Peter and Christina Delithodoris (in relation to Restructure Lot 4), Nick and Julie Anedda (Restructure Lot 1) and Robin Hall (Restructure Lot 2). These lots have significant environmental constraints (acknowledging that the Bushfire Management Overlay doesn't apply wholly to Restructure Lots 1 and 2 but does apply to parts of both), are located beyond the Crown land surrounding Port Welshpool and are proximate to larger established agricultural enterprises. Notwithstanding the reasonableness of any expectations for a dwelling on these properties, the current planning policy framework combined with the locational and physical characteristics of the properties supports the application of the Restructure Plan as exhibited by Council.

The Panel considers that the inclusion of Tom and Dawn Robb's property in the Restructure Plan is also appropriate. In particular, the Panel can see no reason why the property could not

be consolidated with the larger land parcel to the east in the same ownership, to be used for farming purposes. As the larger land parcel does not contain a dwelling, this would likely provide the opportunity for the submitters to construct a dwelling provided the two lots are consolidated. It would also mean that the lot in separate ownership with frontage to Adams Road (containing a dwelling) would no longer need to be included in Restructure Lot 7. This is consistent with the approach contemplated by the Robbs in their second submission.

In the amended documentation that was the subject of notice, Council proposed to delete a road reserve from Restructure Lot 9 in Port Welshpool (Figure 19) to enable ongoing access to the coastline. This was non-controversial and supported by the Panel.

(v) Conclusions

The Panel concludes:

- The proposed Restructure Plan for Port Welshpool is appropriate generally as exhibited with the exception of Restructure Lot 7.
- In the case of Restructure Lot 7, it is considered that the property fronting Adams Road (115 Adams Road) should be removed from Restructure Lot 7 and that the rear (eastern) property forming part of Restructure Lot 7 should be included in new Restructure Lot 7 with the property at 300 Telegraph Road.
- The amendment proposing to delete a road reserve from Restructure Lot 9 is supported.

(vi) Recommendations

30. For Figure 19, Port Welshpool:

a) amend Restructure Lot 7 of the Incorporated Document to remove the property fronting Adams Road (115 Adams Road) and include the rear (eastern) property currently forming part of Restructure Lot 7, as well as the property at 300 Telegraph Road in Restructure Lot 7. A vinculum notation should be considered.

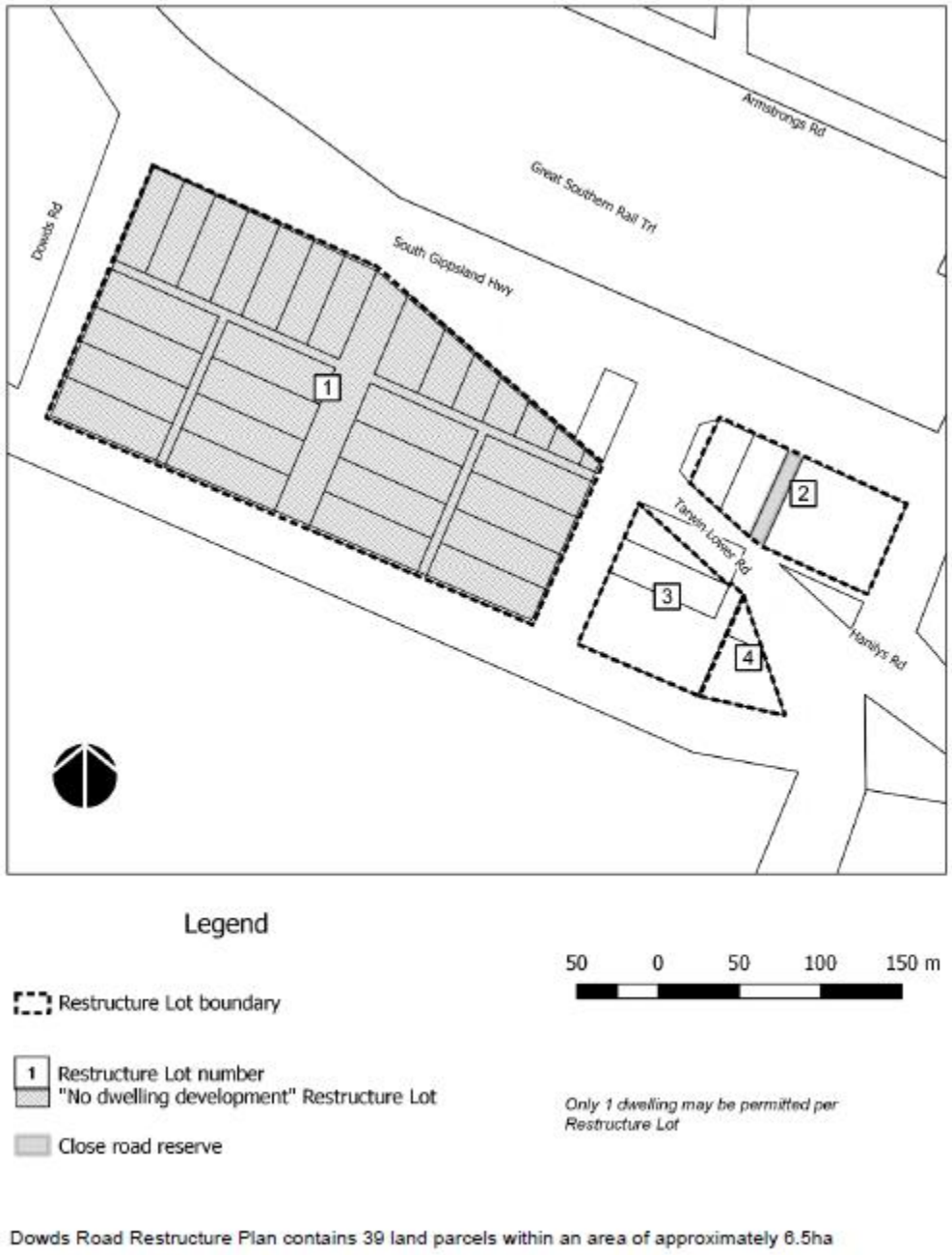
b) amend Restructure Lot 9 to delete a road reserve, as shown on the revised Incorporated Document (Document 18B).

7.12 Tarwin – Dowds Road

(i) Background

This Restructure Plan proposes four Restructure Lots, including one stand-alone western lot. The land within the plan is covered by the Farming Zone in addition to Environmental Significance Overlay Schedule 2 (Special Water Supply Catchment Areas) and the Bushfire Management Overlay.

Figure 19 Dowds Road Restructure Plan – Tarwin (Figure 8)



Dowds Road Restructure Plan contains 39 land parcels within an area of approximately 6.5ha

(ii) The issue

The key issue relates to the application of a 'no dwelling development' control to one of the Restructure Lots.

(iii) Submissions

Glen Morris owns a small parcel of land of 885 square metres situated south of the South Gippsland Highway, adjoining the Tarwin Bushland Reserve. He objected to his property being designated as part of Restructure Lot 1 as a 'no dwelling development lot'.

Mr Morris submitted that even though his land was heavily vegetated, there was capacity to provide acceptable bushfire protection measures and a suitable response to the values of the Tarwin River Catchment. He suggested that formed road access was available and vegetation removal for a dwelling would be minimal. He considered that there are other dwellings nearby and that preserving rural character was not a fundamental obstacle.

Council responded that the size, shape and location of the submitter's land cumulatively make it unsuitable for the development of a dwelling. It also pointed out that the land was purchased by the submitter knowing that the Restructure Overlay was seriously entertained.

Beyond this, Council considered that it would not be appropriate to allow additional dwellings on small 'inappropriate' lots in this part of Tarwin. It emphasised the importance of complying with updated bushfire policy at Clause 13.02, which would not support the development of a dwelling in this location. Likewise, it raised the sensitivity of the site to residential development since it is located within a Special Water Supply Catchment Area.

Council advised that the CFA considered that a previous bushfire assessment for this property was inadequate and outdated. It also had serious reservations as to whether the site could achieve defendable space within its boundaries without affecting the adjacent bushland reserve.

(iv) Discussion

The Panel agrees that the circumstances of Mr Morris' site clearly justify its designation as a 'no dwelling development lot'.

Even having regard to bushfire considerations as well as water catchment sensitivity, in the Panel's view, there would be a very minimal chance of an application for a dwelling succeeding even if a permit could be applied for today. This is exacerbated by the extent of vegetation that would need to be removed from the property to create defendable space and wastewater treatment which would impact on the Tarwin Bushland Reserve and could impact the water catchment given the very close proximity of the town water uptake.

The standalone nature of the site separated by roadways is another reason why Restructure Lot 1 should be treated as a whole and should not be punctuated by a single dwelling in its north eastern corner given its likely visibility from the South Gippsland Highway and Tarwin Lower Road (two tourist routes).

(v) Conclusions

The Panel concludes:

- It supports the Restructure Plan for Tarwin – Dowds Road, including the designation of Restructure Lot 1 as a 'no dwelling development lot'.

7.13 Toora

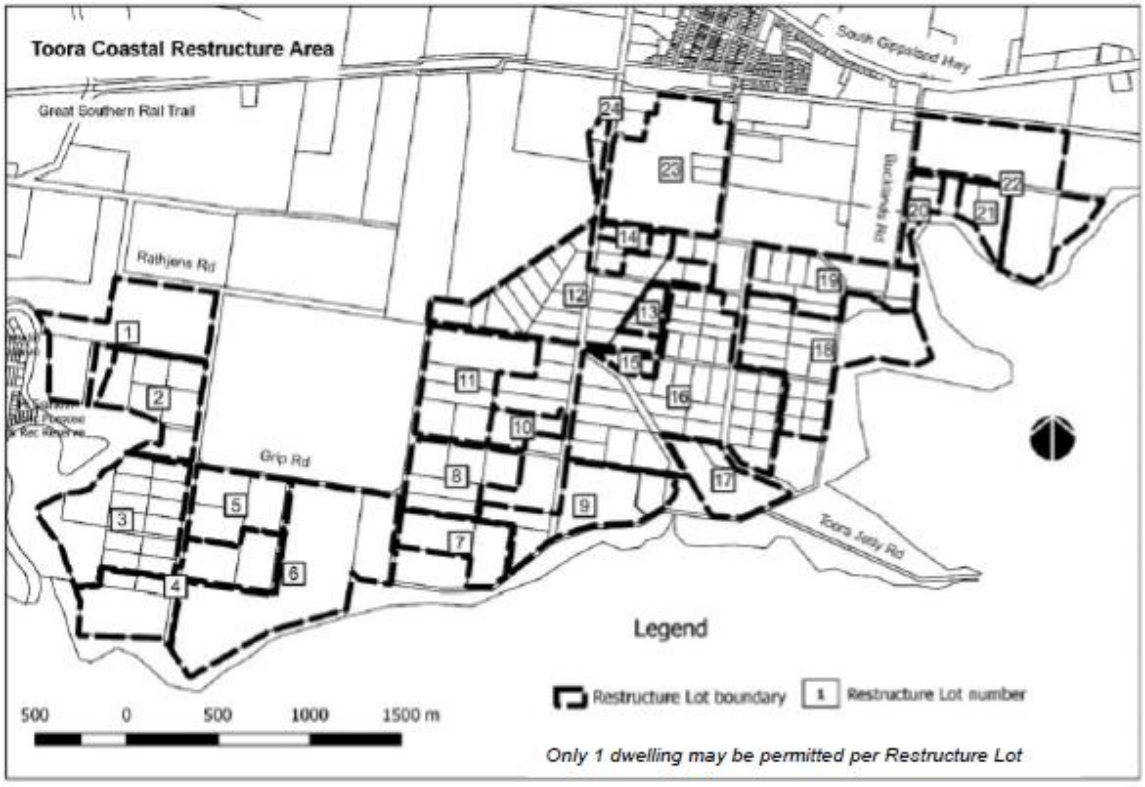
(i) Background

The Toora Restructure Plan area was established in the 1890's. Council referred to this Restructure Plan as the 'Grip Road' area. The Restructure Plan includes land in various locations along the coast, south of the township. A total of 24 Restructure Lots are proposed

for land included in the Farming Zone and covered by Environmental Significance Overlay Schedule 3 (Coastal Settlements – Non Residential Zones), Significant Landscape Overlay Schedule 3 and the Land Subject to Inundation Overlay.

In the case of Toora, the Strategy relates only to the township of Toora itself, not the coastal area to the south of the township within the Restructure Plan. The Strategy identifies Toora as a Small Town with some vacant lots and settlement boundary that extends south to Beale Road.

Figure 20 Toora Coastal Restructure Plan (Figure 15)



Toora Coastal Restructure Area - Approximately 169 land parcels and 606ha area

(ii) The issues

Key issues related to various Restructure Lots where submitters considered that lot configuration or consolidation proposed was inappropriate and the subsequent restriction on future dwellings was unreasonable. Flooding and bushfire risk are also key issues to be addressed.

(iii) Submissions

Summary

Five submissions were lodged in relation to the exhibited Toora Restructure Plan and a further submission was lodged following targeted notification in 2019. Some of the submissions raised concerns about the prospect of having to consolidate land in multiple ownership.

Council approached this Restructure Plan from the perspective that a balance was needed to limit the number of dwellings otherwise the character of the setting and its agricultural output would be affected. It explained that it relied on updated Lidar mapping for properties within the Land Subject to Inundation Overlay to exclude affected land from new dwelling opportunities. This included mapping to the year 2100 including storm surge. Council also referred to the need for Council to access road reserves for sea wall (coastal levee bank) maintenance and this was confirmed in Council's response to Panel Directions.

CMA

In earlier correspondence with Council, the CMA confirmed that some lots within the Restructure Overlay could support a dwelling but that the dwelling and access must be outside the mapped Land Subject to Inundation Overlay area and for other properties, permanent road access needed to be established.

It considered that Restructure Lot 9 would not meet flood depth criteria even as consolidated and therefore did not support a dwelling on that land. Although similar criteria applied to Lots 13, 15-18 and 20-21, these properties already contain a dwelling and if consolidated, no additional dwelling opportunities are proposed. The CMA also noted that in the case of Restructure Lots 23 and 24, the overlay doesn't apply.

Individual submitters

Doug Catherall objected to the inclusion of his land in Restructure Lot 2 since he proposes to build a dwelling on his grazing property and claims no new infrastructure is required. The difficulty is that a dwelling already exists on other land proposed within the same lot which would preclude this proposed use on his land.

Council opposed this submission on the basis of cumulative impact. The property was considered one of a large number of similar sized properties that, if all were developed, would remove land from productive agriculture and change the open rural landscape character. It would also increase the potential for conflict with agricultural activities.

Basil Michos objected to Restructure Lot 4 since it would require him to consolidate his property with land he does not own. He also suggested that this land has favourable characteristics for a dwelling including appropriate drainage. His preferences regarding the road reserve are outside the scope of this Amendment.

Council advised that relevant planning policies and controls did not support the development of a dwelling on his land. More specifically, it did not support the use of his land for a dwelling since there was no part of the site where a dwelling could be located outside the Land Subject to Inundation Overlay which covers the entirety of his landholding. Council explained this is why Restructure Lot 4 includes land outside the submitter's ownership that is not fully within the Land Subject to Inundation Overlay. The restructuring was intended to give notice to a potential purchaser that they should not have an expectation of building a dwelling on the more confined land in line with the position of the CMA.

Glen Cumming submitted that Restructure Lot 21 was inappropriate since it would take years for disparate neighbours to reach agreements to consolidate, involving excessive cost. He pointed out that the resultant lots would still be less than the 40 hectares required for land to be used for a dwelling in the Farming Zone without a planning permit.

Council responded that it did not support the development of a dwelling on his land alone because risks associated with the Land Subject to Inundation Overlay could not be managed suitably. This burden was expected to increase with the effects of climate change. Council also reiterated its concerns about a lack of consistency with policy and the potential for cumulative impact on the coastal landscape.

Council confirmed that a dwelling already exists on the land proposed to be consolidated with his, so his land could continue to be used for grazing without consolidation costs such that there would be no trigger for imminent site consolidation.

A submission was received from Scott Chapman opposing Restructure Lot 8 which would involve consolidation with four other properties in separate ownership. He wishes to construct a dwelling and considers it is not viable to purchase the other vacant titles. He also advised that there are areas available within his property outside the Land Subject to Inundation Overlay (including access) and infrastructure is available. The site already contains a large shed and septic tank.

Mr Chapman regards his landholding as too small to be viable for farming. He also suggested that water table rises are likely to make the land unsuitable for framing in the future due to potential salt level increases. He observed that his land is higher than other properties within the Restructure Overlay and benefited from dual access roads. Mr Chapman subsequently lodged a further submission, following targeted notification, seeking the division of Restructure Lot 8 into two lots.

In responding to Mr Chapman's original submission, Council again referred to the potential for cumulative impact. It also referred more specifically to a decision of VCAT refusing to grant permission for a dwelling on his property and adjacent properties.[31] Council considered that the reasons for refusal still apply, which pertain to a lack of compliance with zone, overlay and policy objectives, in addition to the broader exercise of the precautionary principle in respect of sea level rise and coastal inundation.

Beveridge Williams made a submission on behalf of J Tuffin, the owner of various properties used for commercial farming on Toora Jetty Road, Grip Road and Irelands Road (contained in Restructure Lots 15, 16 and 23). It regarded the Restructure Plan for Toora as unnecessary and unfair since:

- the character of the area supports a rural living hamlet style of development and the location is reasonably well serviced by infrastructure within the nearby township
- the proposed restructure is not supported by significant landscape or environmental risks
- Council could consider the site specific suitability of a dwelling on any given lot without applying the Restructure Overlay since the use and development of a dwelling on land less than 40 hectares requires a planning permit. Localised environmental impacts could be evaluated and managed through this process
- ownership patterns may make consolidation challenging
- the Restructure Lots are excessive and greater in area compared with other Restructure Plans proposed by the Amendment.

[31] *Gippsland Coastal Board v South Gippsland SC & Ors (No 2)* [2008] VCAT 1545.

Alternatively, this submitter requested that additional Restructure Lots be provided for its landholding.

Council responded that:

- a number of the submitters' properties cannot reasonably support a dwelling since they are entirely within the Land Subject to Inundation Overlay mapping and present an unacceptable level of risk according to the CMA
- allowing additional dwellings would compromise policy objectives, the zone and overlay controls and would remove land from agricultural production
- development of vacant lots outside the Land Subject to Inundation Overlay would generate a cumulative adverse impact on the coastal landscape that has identified sensitivity as part of the Corner Inlet Amphitheatre
- specific comments were made in Council's *Issues Raised in Submission and Council's Response* document presented at the Hearing in respect of the particular circumstances of each property.

A submission was lodged by Petra and Frank Miller in relation to Restructure Lot 18 in response to the targeted notification of the amended Incorporated Document in 2019. They have been living in their house for many years and objected to being included in the broader Restructure Lot as they felt it removed their individual rights.

Council explained that Restructure Lot 7 in the Toora Restructure Plan had been consolidated generally in accordance with that plan and could be removed from the Restructure Overlay. This removal was included in the amended version of the Incorporated Document that was the subject of targeted notification.

Changes were also proposed to six sections of road reserves to the coast in Toora (Figure 15) to ensure on-going access options are provided to the coast in the amended documentation that was the subject of targeted notification.

(iv) Discussion

The Panel accepts Council's assessment that many individual properties within the Restructure Overlay in this settlement are unsuitable to contain dwellings for a number of reasons, including the impacts on farmland, character and issues of inundation.

Even though the Panel observes that Restructure Lots in this area have been assembled to include land outside the Land Subject to Inundation Overlay and the lots would be greater than those considered by VCAT in the case referred to above, the Panel is not convinced that allowing further dwellings on any Restructure Lots such would overcome inherent risks of being contrary to the zone purpose and character of the area.

At the same time, net community benefit will flow from allowing a confined number of new dwellings 'in exchange for' consolidating a far larger number of small lots that are unsuitable for dwellings. On balance, the Panel accepts that this justifies the approach taken by Council.

While the Panel acknowledges the potential challenges for consolidating land with multiple owners, in the case of Restructure Lots within Toora, this is especially justified to assemble land with capacity for a dwelling outside the Land Subject to Inundation Overlay or on land above a nominated flood depth. While this may mean that some properties will not have a

future opportunity to be developed with a dwelling, in most cases, such permission would have been highly unlikely or even entirely inappropriate.

This has essentially been confirmed by the analysis undertaken by the CMA of each site within the Restructure Overlay.

These environmental constraints have also fairly resulted in Restructure Lots in Toora being generally larger than the prevailing lot size in other Restructure Plans in the Shire.

Fundamentally, the Panel also supports Council's assessment of relevant policy provisions in light of the Farming Zone which confirm that it is not suitable for this area outside the township close to the coast to be developed as a "rural residential hamlet" as suggested by a submitter, even if services and infrastructure are available within the township nearby.

Another consideration leading the Panel to support the Restructure Lots as proposed is the sensitivity of this particular landscape – the Significant Landscape Overlay Schedule 3 seeks to protect this landscape of regional significance. The open rural landscape and coastal character is prominent in Toora and are key features contributing to its character and appeal. Relevant objectives of Significant Landscape Overlay Schedule 3 include, to "*reduce the visibility of buildings or structures, within the coastal strip, outside settlements*".

If anything, the Panel considers it is arguable that too many 'as-of-right' dwelling opportunities would be created in Toora on relatively small lots, and queries whether it is appropriate for this to be permitted on each of Restructure Lots 4, 5 and 8 in particular which are medium in size, have a direct coastal abuttal and do not yet contain a dwelling.

Another option may be to require these particular properties to still go through the planning permit process to evaluate the appropriateness of a new dwelling, but that prior consolidation in accordance with the Restructure Plan would be required before such a permit application could be made.

Council indicated in its documentation to the Panel on 31 January 2019 that it was not inclined to adopt this approach, since it was reasonable to allow land to be used for a new dwelling as an incentive to consolidate 'old and inappropriate subdivisions', which would result in community benefit.

Post-hearing change

The Panel accepts that it is appropriate to remove identified coastal road reserves from the Restructure Plan as sought by Council to ensure ongoing access to the coast for sea wall maintenance. Council explained that the general alignment of the Restructure Lots would remain unchanged, but several Restructure Lots would be created with various parts, depicted by a vinculum notation.

(v) Conclusions

The Panel concludes:

- The removal of RO Lot 7 from the Restructure Overlay and Toora Coastal Restructure Plan is appropriate.
- Consideration could be given to modifying the Incorporated Document to restrict the development of a dwelling on identified Restructure Lots.

- It is appropriate for the Restructure Plans for this settlement to make provision for access to sea walls.

(vi) Recommendations

31. For Figure 15, Toora:

a) exclude the land within Restructure Lot 7 from the Toora Coastal Restructure Plan and Restructure Overlay (21 Acklands Road, Toora) as shown on the amended Incorporated Document (Document 18B).

b) remove six sections of road reserves to the coast from various Restructure Lots, as shown on the amended Incorporated Document (Document 18B).

7.14 Venus Bay – Juno Road, Atkinson Avenue and Black Avenue

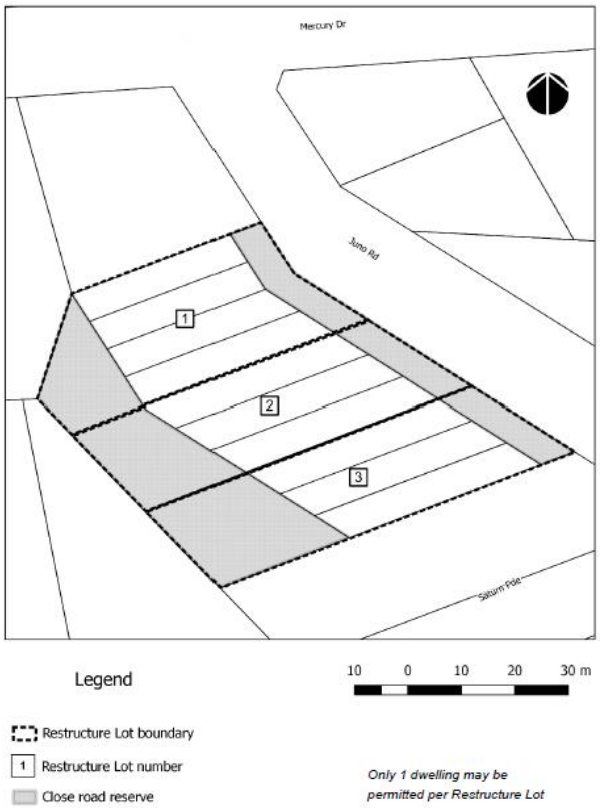
(i) Background

Parts of Venus Bay have a relatively recent history of subdivision in the 1960's by Council, contrary to Council officer recommendations at the time.

Venus Bay is also already currently affected by the Restructure Overlay. In some locations, lots have already been consolidated in line with the relevant Restructure Plans. Accordingly, the Amendment seeks to delete parts of existing Restructure Overlays 1 (Juno Bay) and 2 (Louis Road – to become Atkinson Avenue under Amendment C90), and put in place replacement Restructure Plans.

The Juno Road Restructure Plan proposes three similarly sized lots.

Figure 21 Juno Road Restructure Plan – Venus Bay (Figure 1)

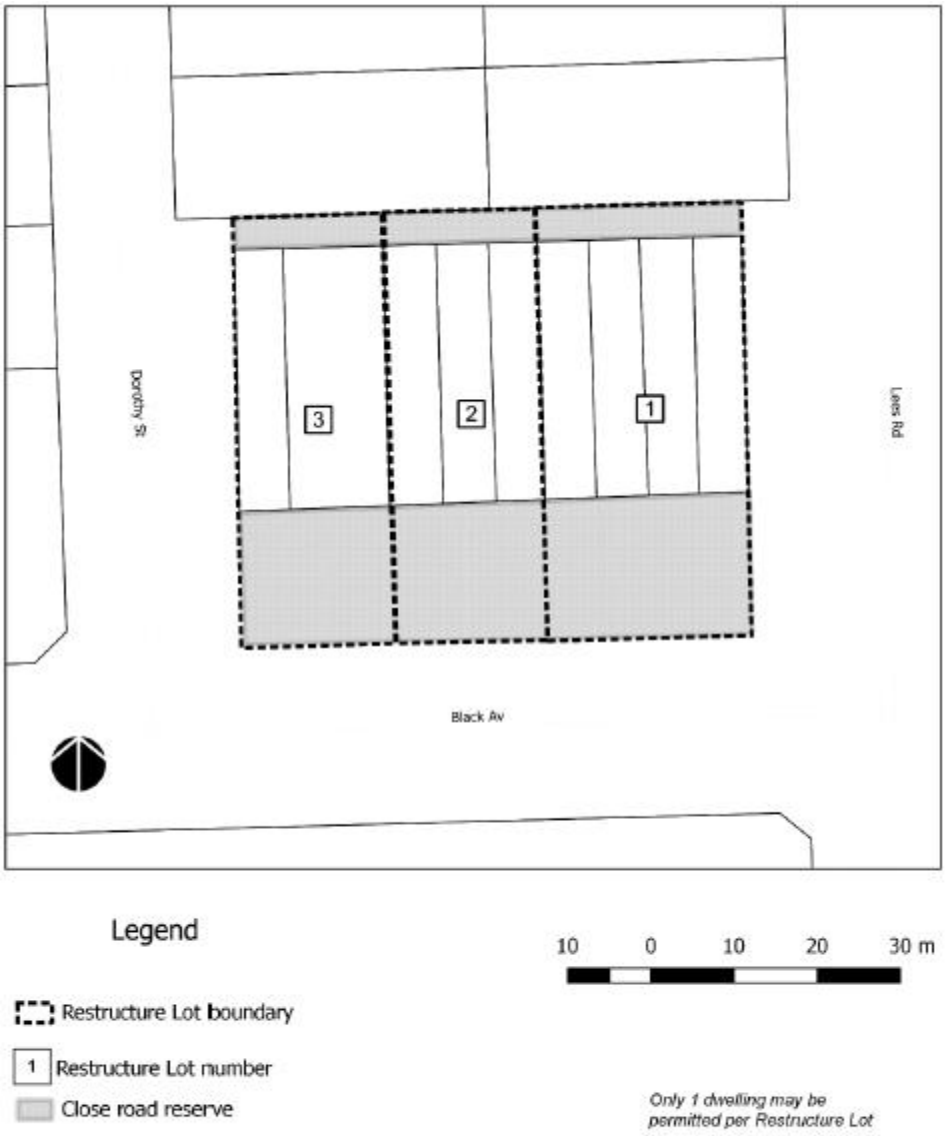


The Atkinson Avenue Restructure Plan proposes a single Restructure Lot comprising four land parcels and a road reserve. No opposing submissions were made in respect of this Restructure Plan.

Figure 22 Atkinson Avenue Restructure Plan – Venus Bay (Figure 2)

The Black Avenue Restructure Plan proposes three Restructure Lots. This land is currently in the Commercial 1 Zone and is proposed to be rezoned Township Zone and have the Design and Development Overlay Schedule 5 (Venus Bay) applied to it.

Figure 23 Black Avenue Restructure Plan – Venus Bay (Figure 3)



The Black Avenue Restructure Plan contains 9 land parcels with an area of 0.2ha (not including proposed road reserve inclusions

(ii) Key issues

Key issues relate to the potential for increased dwellings as a result of the revised Restructure Plans. Concerns were also raised that the subsequent restriction on future dwellings as a result of the Restructure Plans was unreasonable.

(iii) Submissions

Karen and Dale Foster own land opposite the Juno Restructure Area. They objected to the potential for additional dwellings for a number of reasons, including perceived opportunities for camping or caravans on vacant lots, poor building standards leading to dwellings that

detract from the character of the area and the possibility of more than three dwellings being constructed on the lots in total.

Council responded that other land that had been proposed for inclusion in the Restructure Plan was being deleted since restructuring conditions for that land to the north and south had already been met. Therefore, the currently proposed Restructure Plan would only allow up to three new dwellings. The design of these would be controlled by Design and Development Overlay Schedule 5. Council explained that the submitters' concerns about the use of caravans and camping was not relevant to the Restructure Plan.

Peng Wu owns part of Restructure Lot 1 in Black Avenue and objected to the exhibited Restructure Plan and provided a follow up submission following targeted notification. The submitter considered it and the proposed rezoning would negatively impact the economic development of the region; provide less opportunities for employment, increase the cost of development and devalue land. It may also be difficult to reach agreement between multiple owners.

Council advised that the rezoning and restructuring of this land has been foreshadowed in strategic documents (Venus Bay -Estate 2 Framework Plan) since 2009. It considered that Clause 21.15-9 of the existing planning scheme supports the rezoning to refocus commercial development in the existing commercial area of Venus Bay. It noted that Mr Wu only purchased his property in 2017 when the Restructure Plan was seriously entertained. Council also submitted that the individual lots are too small for appropriate wastewater treatment for either commercial or residential purposes.

(iv) Discussion

The Panel accepts that a number of matters raised by some submitters are not appropriate planning considerations in its assessment of the Restructure Plan, such as the potential for the use of caravans or camping on the Restructure Lots. The Restructure Plan does not appear to intensify the opportunity for such land use in any case, with temporary camping and the like commonly controlled by Local Laws rather than the planning scheme.

The Panel reiterates its response to the non-exclusive ownership of Restructure Lots in line with its comments for the Toora and Port Welshpool Restructure Plans.

A key purpose of the rezoning and Restructure Plans for Venus Bay (as distinct from most other residential areas) is to appropriately plan for the future of what is regarded as an inappropriate commercial zone given primacy identified for another existing commercial area in Venus Bay. Council considers that the appropriate future of this land is to support township activities, including housing. It follows that disused laneways and parking areas should be consolidated into adjacent lots.

The Panel was not provided with evidence as to the viability of commercial land use on these properties. However, it considers that the proposal to transition the role of this land can be supported given the broader context of this land and the diverse opportunities that would be permissible under the Township Zone, which would include a range of commercial uses if market demand eventuated. It is also reasonable to move away from the very small, narrow lot pattern originally envisaged when the subdivisions were created to better integrate with the surrounding context.

The Panel regards Council's configuration of the Restructure Lots as appropriate, although it observes the inherent challenge in achieving the consolidation of Restructure Lot 1 of the Atkinson Avenue Restructure Plan which has two relevant owners. On the whole, the Restructure Lots to be created are very confined in area, at approximately 1,000 to 1,250 square metres after consolidation. Given their size and their setting, they are therefore suitable candidates for new dwellings and there is community benefit in agglomerating even smaller lots within each.

(v) Conclusions

The Panel concludes:

- The Restructure Lots as exhibited for Venus Bay are appropriate.

7.15 Other Restructure Plans where no opposing submissions were made

(i) Background

Other Restructure Plans that are encompassed by the Amendment where no opposing submissions were received include Whitelaw, Newcastle (Korumburra), Bennison, Buffalo, the intersection of Todds Road and South Gippsland Highway in Hedley (Crown land), Stony Creek and Dollar Hall Road.

The Panel has considered these Restructure Plans for completeness and to ensure a strategic and consistent approach to the suite of Restructure Plans as a whole.

(ii) Submissions

Council took the Panel through all Restructure Plans at the hearing to explain their inception and proposed operation.

Submitters affected by the Buffalo Restructure Plan sought closure and acquisition of an adjacent unmade road reserve. Council explained that this request is outside the scope of the Amendment and would be progressed by Council's assets department as a separate process.

The CFA also considered that further assessment of the land at 30 Hall Road would be appropriate to confirm in principle that new residential development could achieve suitable vegetation setbacks or a higher construction rating to account for vegetation on adjoining lots.

Council also made particular comments about the Newcastle Restructure Plan which would consolidate a large number of lots in single ownership across an irregular shaped 24 hectare parcel of land. It explained that the land was recently sold and that it appears that there is no potential to connect to the South Gippsland Highway, so realignment is proposed via a Public Acquisition Overlay.

In response to Panel directions after the Hearing, Council confirmed that no change is proposed to the Dollar Hall Road Restructure Plan since it is unlikely that the lots can be developed in the future. It explained that the former school in Restructure Lot 1 could potentially be converted to a dwelling and that there is scope for a dwelling on the northern boundary of Restructure Lot 2.

The need to identify Restructure Lot 1 in the Jacks Road Restructure Plan – Stony Creek (Figure 20) as a 'no dwelling development' was identified by Council at the Panel Hearing and this change was made in the revised Incorporated Document (Document 18B).

Council also proposes to retain the Restructure Plan for Newcastle as exhibited, subject to a small alteration to require vehicular access to be provided as a condition of the Incorporated Document.

Council proposed some post-exhibition changes to Restructure Lots in Buffalo such as the inclusion of adjacent land in Restructure Lot 1.

A submission was also lodged by DG and A Lawyers in relation to the Whitelaw Restructure Lot 1 (Figure 6), following the targeted notification that occurred in 2019. The submission sought clarification of the inclusion of three road reserves in Restructure Lot 1. Council confirmed in its response to the submission that the road reserves did form part of the Restructure Lot and that it would amend Figure 20 and the accompanying table to clarify this.

(iii) Discussion and conclusion

The Panel offers general support to the approach taken by Council to Restructure Plans for which no opposing submissions were made.

(iv) Recommendations

32. For Figure 16, Buffalo, amend the Restructure Plan in accordance with the updated Incorporated Document (Document 18B), subject to further assessment confirming that new residential development can meet the relevant requirements for bushfire risk and management.

33. For Figure 20, Jacks Road-Stony Creek, amend the status of Restructure Lot 1 to be identified as a 'no dwelling development lot', as shown on the revised Incorporated Document (Document 18B).

34. For Figure 6 Korumburra-Bena Road-Whitelaw, amend the mapping and accompanying table to clearly show the road reserves that form part of Restructure Lot 1.

Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Ansevata Nominees	67	Katherine McCaughey
2	Cheryl & Reg Smith	68	Tess Deyl
3	Owen & Sarinya Storrie	69	Kellie Dean for MJ & KA Dean Pty Ltd
4	Jeanette Causon	70	Shirley Cowling
5	Peng / Isaac Wu	71	Cliff Carson on behalf of Carson & Tarr families
6	Kelly Pruyn	72	Brigid Watson
7	Richard (& Margaret) Turner	73	Glenn Morris
8	Meryl Agars	74	Robyn Hill
9	Margaret Atkins	75	Keith Hancock
10	Kerry Trewin	76	Jo Wainer
11	David & Gabrielle Pratt	77	Ellen Koshland
12	Peter & Jenny Linley	78	Angela Child
13	Alison Newman	79	Arne Sorensen
14	Kevin Alder	80	Neil & Lyn Loader
15	David Farrar	81	Rodney Coral Donat
16	Dale Foster	82	DELWP Crown Land Management
17	Roger and Marie Naylor	83	Edward Barlow
18	Lisa and Wayne Kuhne	84	Winsome McCaughey
19	John Paine & Linda Wostry	85	Patricia (Trish) McCarthy
20	Tom Durston	86	Ann Waycott
21	Andrew Way	87	Stephen Sully on behalf of WSRT Committee of Management
22	Kimbra & Terry White	88	Tony Walker & Susan Quinn
23	Eric & Jean Judd	89	Sam Langford-Jones for Strathworks Pty Ltd
24	Frank Smolders & Michaela Lein	90	Scott Chapman
25	Tom & Dawn Robb	91	EPA
26	Gerard & Linda Van Dyke	92	Basil Michos
27	Stephen & Kerri Green	93	Margaret & Peter Robertson
28	Doug Catherall	94	Vanessa Tarr

29	Cluny Ferguson Skinner	95	Joan Liley
30	Mark & Cara Sambell	96	Merryn Wilde
31	Doug Knez for Fish Creek Catholic Church	97	Hollie Kerwin & Kerry Ford
32	Paul and Penny Hamlett	98	Tim & Jane Jackson
33	Margaret Smith	99	Peter & Anne Latreille
34	Lydia Embden	100	Isley Sutherland
35	Gillian and Graham Nicoll	101	John Wallace
36	Stuart and Danielle Mackie	102	Helen & Dennis Sweeney
37	Glenn Cumming	103	Ross & Eleanor Mackinnon
38	Miryana Hranilovic	104	Susan & Wilfred Fechner
39	Helen and Lindsay Broad	105	Lynda & Ben Schulz
40	Bill & Jayne Richardson	106	Margaret Slane
41	Lorraine Kirk	107	John & Jennifer Evans
42	Stephen & Lee Storti	108	Margaret Windisch
43	Nick & Julie Anedda	109	Jillian Bickford
44	David de Coite	110	Patricia Jelbart
45	James & Cindy Gair	111	Transport for Victoria
46	Mary Gair	112	Rob Dabal & Emily Wright
47	Ian & Michelle Conn	113	Alison Lester
48	Robin Hall	114	Mark Burns
49	Peter & Christina Delithodoris	115	South Gippsland Water
50	John Basile	116	Brian Hess
51	West Gippsland CMA	117	Tony & Elizabeth Landy
52	James Schneider	118	Rod Tayler & Catherine Shugg
53	Walkerville Ratepayers and Residents Association Inc	119	Kevin & Zoe Hibberson
54	Kristelle Sherwood	120	Lex Dwyer
55	Sarah Murphy	121	Bruce Filley & Sue Jobst
56	John & Margaret Freeland	122	Wellington Shire Council
57	Mary Williams for Walkerville Trust	123	Ted & Michelle Landy
58	Neil Gracey	124	Mary & Harvey Beruldsen
59	James McCaughey	125	Carolyn Wilde
60	Jack & Juneen Schulz	126	Country Fire Authority

61	Michael Varrenti & Tilda Hum	127	Rob King
62	Karena & Paul Kerr	128	Rob King
63	Andrew & Karen Dorling	129	Delwyn McGlashan - Michele and Dennis Bennett - Helen and Lindsay Broad - Gerard and Kate O'Reilly - Roger Catherine and Denise Gibbons
64	Arthur Dorling	130	Stephen Koci
65	David & Dorothy Christie	131	Ian & Chris Dubignon
66	Brian Williams & Emily O'Brien		
	Second Notification (2019)		
1	Peng Wu and Xiaomeng Fu	9	Brigid Watson
2	VicTrack	10	TJ and HD Robb
3	Nicolino and Julie Elizabeth Anedda	11	Beverly & Graeme Goding
4	WGCMA Authority	12	Petra and Frank Miller
5	Transport Department	13	Nicolino and Julie Elizabeth Anedda
6	DELWP	14	Robin Hall
7	David Gibbs	15	Scott Chapman
8	Paul and Penny Hamlett		

Appendix B Parties to the Panel Hearing

Submitter	Represented by
South Gippsland Shire Council	Ken Griffiths and Christy Crawford at first Hearing and Chantal Lenthall, Vera Fordyce and Paul Stampton at second Hearing
Country Fire Authority	Ms Anne Coxon (first Hearing)
Rob King	Ms Joey Whitehead, town planner, Beveridge Williams (first Hearing)
GD & GA Nicoll	(first Hearing)
Del McGlashan	Ms Michele Bennett (first Hearing)
Paul Kerr	(first Hearing)
Brigid Watson	(both Hearings)
Douglas Catherall	(first Hearing)
Scott Chapman	(first Hearing)
Paul and Penny Hamlett	(both Hearings)
Lindsay and Helen Broad	(first Hearing)
West Gippsland Catchment Management Authority	Mr Adam Dunn (first Hearing)
Nick & Julie Anedda	(second Hearing)
Department of Environment, Land, Water and Planning	Ms Bonnie Crow (second Hearing)

Appendix C Document list

No.	Date	Description	Provided by
1	12/11/2018	CFA Submission	Ms Coxon
2	12/11/2018	Submission on behalf of Mr King	Ms Whitehead
3	12/11/2018	Photographs of 10 and 11 Cross Street, Outtrim	Ms Whitehead
4	12/11/2018	Tourist accommodation information	Ms Whitehead
5	12/11/2018	Submission on behalf of GD and GA Nicoll	Mr Nicoll
6	12/11/2018	Planning permit for 76 Rees Road, Jumbunna	Mr Griffiths
7	12/11/2018	Planning permit for 6470 South Gippsland Highway, Welshpool	Mr Griffiths
8	13/11/2018	CFA comments on 1 Lasseters Road property	Mr Griffiths
9	13/11/2018	Submission on behalf of various Outtrim landowners	Ms McGlashan
10	13/11/2018	Submission by Paul Kerr	Mr Kerr
11	13/11/2018	Submission by Brigid Watson	Ms Watson
12	13/11/2018	VCAT Decision - *Gippsland Coastal Board v South Gippsland Shire Council and Others (No 2)* (includes Summary) (Red Dot) [2008] VCAT 1545	Mr Griffiths
13	13/11/2018	Submission on behalf of Paul and Penny Hamlett	Mr and Ms Hamlett
14	13/11/2018	Submission on behalf of Helen and Lindsay Broad	Ms Broad
15	13/11/2018	Yarra Ranges Amendment C160 Panel Report	Council
16	30/11/2018	Panel Directions following Panel Hearing	Panel Chair
17	31/01/2019	Council response to post Hearing Directions	Council
18A	31/01/2019	Attachment 1 – updated local planning policy framework (LPPF) changes and map sheets	Council
18B	31/01/2019	Attachment 2 – updated Incorporated Document	Council
18C	31/01/2019	Attachment 3 – track changed version of LPPF within the Amendment Documentation	Council
19	08/02/2019	Letter to Council regarding updated Amendment documentation	Panel Chair
20	04/03/2019	Council response to Panel questions regarding updated Amendment Documentation	Council
21	08/03/2019	Panel Directions for further notification	Panel Chair
22	17/04/2019	Council letter referring further submissions received	Council
23	17/04/2019	Summary of further submissions and Council response	Council

No.	Date	Description	Provided by
25	17/04/2019	List of further submitters	Council
26	06/05/2019	Letter to further submitters advising of video conference Hearing	Panel Chair
27	22/05/2019	Panel Directions for the further Hearing	Panel Chair
28	24/05/2019	Submission by Brigid Watson	Ms Watson
29	26/05/2019	Submission by Paul and Penny Hamlett	Mr Hamlett
30	28/05/2019	Closing submission by Paul and Penny Hamlett	Mr Hamlett